



TOWN OF PALM BEACH

Public Works Department

November 7, 2019

CERTIFIED MAIL/RETURN RECEIPT

Neil M. Schiller
Saul Ewing Arnstein, & Lehr
515 N. Flagler Drive, Suite 1400
West Palm Beach, FL 33401

RE: Palm Beach Hotel Solid Waste Collection Service Location

This letter is to acknowledge your request to appeal my decision of the location of your client's (Palm Beach Hotel) solid waste pickup. I would also like to take the opportunity to address some of the concerns expressed in the attached letter dated November 6, 2019.

You were concerned that you were notified via email as opposed to certified letter. I'm sure you remember that the vast majority of our communications working through these issues for the past year have been oral communications and email. That approach was sufficient for you in the past. Apparently, it is now not sufficient, so I am sending this certified letter to you expressing what we have discussed in the past two (2) weeks and what you have acknowledged in your letter.

We are not ceasing service. As you acknowledge in the attached letter, your client is required to bring their solid waste to a different location to minimize negative impacts to their neighbors. You also stated:

"Additionally, we assert that this notice is faulty in that Section 102-48 of the Town of Palm Beach Code of Ordinances requires that when collection is stopped, a notice of the cessation of service must be filed with the Town Manager and a copy of the notice served upon the owner or occupant of the premises affected."

This is not accurate. We have not stopped your service. Your point of service has changed.

You state that it is an economic hardship to bring your solid waste to Sunrise Avenue versus Park Avenue. I would disagree. The difference is approximately 450 feet. The same staff that brings the solid waste to Park Avenue can take it to Sunrise Avenue. The existing concrete sidewalk on your property behind the building will facilitate rolling a container or containers to Sunrise Avenue.

In weighing the impact to your client's staff time verses the impact to your neighbors, I feel my decision is justified. I do not believe that this decision will negatively affect the "health, safety and welfare of the residents and their guests".

Your client will not have a fire code issue if your client's staff promptly returns any containers to the northwest corner of the building as they do today. Any problems with storing containers on the southeast corner of your client's building or blocking the gate will be self-inflicted.

The Landmarks issue you raise can also be solved by promptly returning the containers to the northwest corner of the building as your client does today. The fact that we pick up at the southeast corner of the building does not mean that you need to store your containers there. You don't store them there today.

My letter dated June 14, 2019, acknowledged your clients willingness to help find a compromise solution. In addition, as you quoted, the letter states that it may not be the final solution. In recent conversations with your client's neighbors that are directly impacted by our attempted compromise, it is apparent to me that the current approach is not acceptable to them. As previously stated, I need to weigh the impact to the neighbors against your client's inconvenience of rolling containers another 450 feet to Sunrise Avenue and then back to where they are stored. I believe that I have made the correct decision.

I will contact the Town Manager to discuss advancing your appeal. I will be in contact with you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'H. Paul Brazil', with a stylized flourish at the end.

H. Paul Brazil, P.E., Director of Public Works

cc: Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
Eric Brown, P.E., Assistant Director of Public Works and P.W. File
Chester Purves, Services Division Manager

SAUL EWING
ARNSTEIN
& LEHR^{LLP}

Neil M. Schiller, Esq.
Partner
Neil.Schiller@Saul.com

November 6, 2019

Mr. Paul Brazil
Public Works Director
Town of Palm Beach, Florida
951 Okeechobee Road
West Palm Beach, Florida 33401

RE: Correspondence of November 4, 2019 – PB Hotel Solid Waste Collection

Dear Mr. Brazil:

As you know, the law firm of Saul Ewing Arnstein and Lehr represents the Palm Beach Hotel Condominium Association, Inc., a legal Florida not-for-profit corporation, in relation to this matter. On Monday we received an email from Mr. Chester Purves, Services Division Manager regarding a change in the Town's solid waste and recycling service at my client's property. Pursuant to Section 102-9 of the Town of Palm Beach Code of Ordinances, **my client desires to appeal the public works director's decision to relocate my client's authorized solid waste and recycling pickup location on its property.**

Since April 26, 2019, my client and the Town have worked collaboratively to address the solid waste concerns at the Palm Beach Hotel. We met with you and Mr. Purves multiple times on site and in your office to come up with a compromise and appease the Town. We agreed to move our commercial waste container to the southeast corner of the property, while ensuring that residential pickup and recycling would remain at the north side of the property, where solid waste pickup had occurred continuously since at least the 1970s. My client has spent thousands of dollars on this issue alone, including the purchase of additional RESIDENTIAL containers as directed by Mr. Purves at one of our on-site meetings in early June. On June 14, 2019, we received correspondence from you memorializing the compromise described above. (Attached) Everything seemed to be going well until you called me on Monday, October 28, 2019, you called me to advise of changes to my client's solid waste service irrespective of the compromise we agreed to and relied on as you memorialized in your correspondence of June 14, 2019.

Procedurally, we object to receiving this notice via electronic mail, rather than a certified letter as that would be more appropriate to alert property owners to substantive changes unilaterally made by the Town. Additionally, we assert that this notice is faulty in that Section 102-48 of the Town of Palm Beach Code of Ordinances requires that when collection is stopped, a notice of the

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DELAWARE FLORIDA ILLINOIS MARYLAND MASSACHUSETTS NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP

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Attn: Mr. Paul Brazil

cessation of service must be filed with the Town Manager and a copy of the notice served upon the owner or occupant of the premises affected. The proposed action by the Town in relocating all of the premises' garbage and recycling collection is akin to ceasing service and proper notice should have been filed. It is ironic that the Town sends written bills and notices for solid waste charges and collection thereof, and not send any written notice on the cessation and/or relocation of this essential governmental service.

Staff's desired relocation of Palm Beach Hotel's solid waste is an economic hardship that will also disrupt the property's operations as well as the health, safety and welfare of the residents and their guests. The property's site plan was approved with a trash room, at the Northwest corner of the building. That room is where trash bins are stored and where the maintenance staff deposits the refuse from the building twice a day. Additionally, there are yellow and blue recycling containers located at the back of the building. Currently, our one-person maintenance staff places the residential containers on Park Avenue in the morning right before 10:00 am as directed. Once the waste or recyclables are retrieved by the Town, the drivers have put the containers back onto our property where our staff retrieves them as soon as they can and returns them to the building. Due to the number of units in the building and the number of containers that will be needed to ensure safe and healthy operation of the property, the association will be forced to hire additional staff and purchase additional containers in order to comply. For a non-profit condominium association, with unique features and challenges like my client, this relocation will be an economic hardship.

The proposed relocation of the solid waste and recycling containers creates unintended consequences due the size of the property and number of containers that would be required. The property consists of 262 total units including some very large common areas. Of those 262 units just five of them are commercial tenants; the balance (257) are residential units in the condominium and are charged by the Town as such. As we previously relayed our concerns regarding the volume of solid waste generated by the property and its uses; it does not seem plausible or practical to relocate these residential containers to the Southeast corner of the property. Currently there is limited space on the eastern side of the building, with large, mature landscaping occupying a large portion of the area. The number of containers that will be required for both commercial and residential solid waste and recycling pickup will effectively block that gate entrance onto Sunrise Ave. Our residents and guests store their bicycles and other similar vehicles just forty feet away from your proposed solid waste and recycling pickup location; which would again effectively block that access. Lastly, the Palm Beach Hotel Condominium Association is home to Congregation New Synagogue of Palm Beach, which uses the eastern portion of our property for various activities and religious ceremonies, including locating their Sukkah there during the Sukkot holiday. The proposed relocation for commercial and residential solid waste and recycling pickup will have significant negative impacts on the health, safety and welfare of the residents who live or visit the property.

The Town's proposed relocation of the property's commercial and residential solid waste and recycling collection location violates the International Fire Code and should be voided. The Sunrise Ave. gate on the southeast side portion of the property is a fire-safety egress point for the property. There are emergency exit stairs in close proximity to this gate. As referenced above, the proposed relocation will require a number of containers to be placed in this location; creating a number of impediments to quickly and safely accessing Sunrise Ave. as the closest public right

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of way; which is considered a means of egress under the International Fire Code. The International Fire Code requires that means of egress be unobstructed.¹ Additionally, Section 1004.7 of the International Fire Code requires that "yards, patios, occupied roofs, courts, and similar outdoor areas accessible to and usable by the building occupants shall be provided with means of egress as required by this chapter..."² Relocating the solid waste and recycling pickup location will create significant obstructions to the established means of egress from the building and the property and must be immediately rescinded.

The Palm Beach Hotel is a "landmarked" building in the Town of Palm Beach and is listed on the National Register of Historic Places by the National Park Service. The building and property are clearly important to the Town having been designated as a landmark. In 2008, when the building was proposed and approved as a landmark, the Landmarks Preservation Commission's duties were to safeguard the Town's historic and cultural resources through its historic districts. Due to its landmark status, the Town of Palm Beach Code of Ordinances appears to prohibit the proposed relocation of commercial and residential solid waste and recycling pickup location. Section 54-71(a) of the Code says,

"No landmark nor any building or site planning feature, including but not limited to landscaping, garden walls, pools, fountains, etc., on a landmark site or within an historic district shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the commission. Similarly, if earthworks of historical or archaeological importance exist in an historic district, or on a landmark site, there shall be no excavating or moving of earth, rock or subsoil in or about such earthworks without a certificate of appropriateness. For the purpose of this article, "exterior architectural features" shall include but not be limited to the architectural style, scale, general design and general arrangement of the exterior of a building, including the kind and texture of the building material and type and style of roofs, windows, doors and signs. The style, scale, design, materials and location of advertising signs and bill posters on a landmark site or within an historic district, if located or plainly visible from out-of-doors, shall be under the control of the commission."

The proposed relocation of the solid waste and recycling pickup location for my client's property and its unintended consequences was not heard by the Town of Palm Beach Landmarks Commission, nor was a certificate of appropriateness obtained. Due to the number of containers required by the property and the fact that we cannot effectively block the egress gate on Sunrise Ave., the only practical option for the property and its residents and staff, is to store the containers on the east side of the property which will affect the existing mature landscaping. The code specifically prohibits this without a certificate of appropriateness. Based on the foregoing, the proposed relocation of the solid waste and recycling pickup location violates the Town of Palm Beach Code of Ordinances and therefore should be immediately rescinded.

You and the Town have previously committed to my client, in writing to continue solid waste and recycling services to the Palm Beach Hotel Condominium Association at the northern side of the property. On June 14, 2019, you sent a letter to my client thanking us for our communication and

¹ Sec. 1003.6, 2018 International Fire Code.

² Sec. 1004.8, 2018 International Fire Code.

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Attn: Mr. Paul Brazil

cooperation to the changes made in June to our solid waste collections. You wrote, *"Your willingness to work with our department is very much appreciated, as is your dedication to ensure that your property's needs are being met."* Additionally, in the third paragraph you wrote, *"The Town recognizes and appreciates you raising concern related to the amount of solid waste being generated by the property when vacancy rates have been relatively high and its impact on the current solid waste collection operation. To address your valid concerns, the Town kindly requests that your staff utilize the commercial dumpster first and then fill the residential bins that get taken to Park Avenue Monday, Tuesday, Thursday, and Friday. Additionally, the driveway, owned by the Town of Palm Beach, shall continue to be used by the Palm Beach Hotel for deliveries, residential solid waste collection and recycling, and any other reasonable and customary uses the Palm Beach Hotel has used the driveway."* The letter does go on to say that this may or may not be the final solution, but that you "sincerely appreciate having a like-minded partner seeking to create a suitable compromise for all." Recognize that we received this letter on June 14, 2019, and did not hear anything from the Town until October 17, 2019, about a meeting and then we spoke on Monday, October 28, 2019, when you informed me that you would be relocating the solid waste and recycling collection at my client's property to the Southeastern portion of its property. On November 1, 2019, you asked me if my client was prepared for your service relocation. I responded that day that it was not, and that they'd appeal your decision to the Town Council. There is no rhyme or reason for the proposed service change other than the neighbors on Park Avenue have complained. This was the basis for the original change in service in June, now they complain again, and service is moved again? With 262 units in the Palm Beach Hotel, we have many more registered voters in the Town than those that live on Park Avenue. Further, the building was constructed and operating BEFORE any of the residents on Park Avenue purchased their homes. It appears that the Town is singling out the Palm Beach Hotel Condominium Association for continuing its operations as it had for at least the last thirty years.

The Town's actions in unilaterally relocating the established commercial and residential solid waste and recycling pickup location not only violates the Town's Code of Ordinances as a Landmarked property, but it also violates the International Fire Code by creating obstructions in the means of egress used to exit the building and property in case of an emergency. The Board of the Palm Beach Hotel Condominium Association has been actively addressing the other issues in the building and on the property and have been making great headway; however costly distractions like this only serve to drain the Association's resources, including the energy and willingness of the board members and President to serve. My client has proven that it is willing and able to work with the Town to improve the property and the community; however, we need to be met halfway and not continuously fighting over where to place the garbage on our property. We respectfully request that you immediately rescind the relocation directive and reestablish solid waste and recycling collection at the northern portion of the building as this was a standard pattern and practice for thirty or more years.

Please advise when the appeal hearing will be scheduled and the appropriate procedure for the hearing. As this is an appeal of a staff action that was timely filed, we request that the proposed relocation be stayed until there is a final resolution. Please feel free to contact me with any questions or concerns. Be advised that we have filed two public records requests related to this issue and may desire to amend this correspondence.

November 6, 2019

Attn: Mr. Paul Brazil

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil M. Schiller', with a long, sweeping horizontal stroke extending to the right.

Neil M. Schiller

For the Firm

CC: Mayor Gail Coniglio
Council President Danielle Moore
Council President Pro Tem Maggie Zeidman
Council Member Julie Araskog
Council Member Lew Crampton
Council Member Bobbie Lindsay
Town Manager Kirk Blouin
Deputy Town Manager Jay Boodheshwar
Town Attorney John C. Randolph, Esq.
Client



TOWN OF PALM BEACH

Public Works Department

June 14, 2019

Mr. Michael Arendt, President
Palm Beach Hotel Condominium Association
235 Sunrise Avenue
Palm Beach, Florida 33480-3812

RE: Solid Waste Collection at Palm Beach Hotel

Dear Mr. Arendt:

I wanted to memorialize our conversation from June 5, 2019, regarding the solid waste collection service at your property. Thank you for your cooperation and communication with our staff relating to the operational changes to collecting the solid waste. Your willingness to work with our department to address the Town's concerns with the previous solid waste collection is very much appreciated, as is your dedication to ensure that your property's needs are being met.

Currently, all of the residential waste is being collected by your maintenance staff on each floor and transferred to the waste collection room located on the northwest side of the building. The waste collection room has residential trash bins that are filled daily and brought to the curb on Park Avenue by the Palm Beach Hotel staff. Any commercial waste is being collected in a dumpster located on the east side of the building.

The Town recognizes and appreciates you raising concern related to the amount of solid waste being generated by the property when vacancy rates have been relatively high and its impact on the current solid waste collection operation. To address your valid concerns, the Town kindly requests that your staff utilize the commercial dumpster first and then fill the residential bins that get taken to Park Avenue Monday, Tuesday, Thursday, and Friday. Additionally, the driveway, owned by the Town of Palm Beach, shall continue to be used by the Palm Beach Hotel for deliveries, residential solid waste collection and recycling, and any other reasonable and customary uses the Palm Beach Hotel has used the driveway.

Again, thank you for your diligence in assisting the Town in addressing solid waste collection from a community perspective. We recognize that the current setup may or may not be the final solution, however, we sincerely appreciate having a like-minded partner seeking to create a suitable compromise for all. Please continue to raise potential issues as they arise and we will be happy to continue to work with you.

Sincerely,

H. Paul Brazil, P.E.
Director of Public Works

cc: Neil Schiller, Saul Ewing, Arnstein & Lehr
Eric Brown, P.E., Assistant Director of Public Works
Chet Purves, Services Division Manager

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ORB 7247 Pg 1951

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. CL-88-8711 AO

PALM BEACH HOTEL CONDOMINIUM
ASSOCIATION, INC.,
Plaintiff(s),

vs.

BARNETT BANK OF PALM BEACH
COUNTY, INC., et al,
Defendant(s).

FINAL JUDGMENT

THIS CASE was tried before the Court on a Complaint for a Declaratory Judgment to establish an easement in favor of the Palm Beach Hotel Condominium Association, Inc. across the property of Howard Lichterman and Carol Lichterman, his wife. The Palm Beach Hotel and the building located on the property owned by the Lichtermans were built in 1925. The Lichterman property was known as "The Palm Beach Hotel Annex" and was used for employee housing. The properties were used in conjunction with each other and were in the same ownership until 1981 when the Palm Beach Hotel property was submitted to a Declaration of Condominium by a developer. The next year, the developer conveyed the annex property to himself as trustee, thus severing the unity of title which had existed for fifty-seven years. The west ten feet of the annex property (now

known as "The Park Avenue Inn") is a driveway which provides the only access to the rear service area of the hotel out to a public right of way. At the time the unity of title was severed, the developer failed to reserve this easement in favor of the hotel condominium.

The Palm Beach Hotel Condominium contains 320 condominium units, including 26 commercial condominiums with such businesses as a bicycle shop, a French bakery and cafe, an Italian restaurant, a large restaurant/lounge with an alcoholic beverage license, a barber shop, three real estate brokerages, a large banquet facility with commercial kitchen, an interior decorator, a talent agency, a barber shop, a fitness spa, a catering service, a mortgage broker, and several other businesses. The property is a nonconforming use under the Town of Palm Beach Zoning Code and is used in a much more intense manner than would be permitted under the modern zoning code.

There is a service area behind the hotel for delivery of goods, maintenance of utilities, access to the service and freight elevator, dumpster storage, fire and emergency service and the holding of cooled food wastes in two specially designed structures. The service area is accessible only through the driveway over the west ten feet of the Park Avenue Inn property. The driveway has been in continuous, open and notorious use since the hotel and its annex (now known as the "Park Avenue Inn") opened in 1925. The unique configuration of the hotel building and surrounding structures necessarily requires an access easement to

Park Avenue. The only access available is the driveway on the west side of the Park Avenue Inn property. The easement is absolutely necessary for the beneficial use and enjoyment of the hotel property, as well as for the health and safety of the owners of the condominium units, the hotel guests and the patrons of the commercial establishments.

The Plaintiff also seeks removal of the metal fire escapes at the rear of the Park Avenue Inn property which encroach on the northern boundary of the Palm Beach Hotel Condominium property. Although there is no affirmative defense pled by the Defendant, Park Avenue Inn, property owner, the record reflects that the fire escapes have been in existence for a long period of time. Inasmuch as the photographic evidence indicates no appropriate fire escape to the south of the Park Avenue Inn property, the Court declines to order removal of the metal fire escapes. Should the Plaintiff wish to pursue this aspect of the case, this denial is without prejudice to the right of the parties to readdress this matter to the Court.

THEREUPON, IT IS ORDERED AND ADJUDGED THAT:

1. An easement of necessity is hereby established in favor of the Palm Beach Hotel Condominium property (legally described on the attached Exhibit "A") across the western ten feet of the Park Avenue Inn property (legally described on the attached Exhibit "B").

2. The request of Palm Beach Hotel Condominium Association, Inc. for removal of the fire escapes on the south side

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of the Park Avenue Inn property is hereby denied without prejudice to the parties to readdress this matter to Court.

3. Jurisdiction is reserved to assess costs and determine entitlement and if appropriate, assessment of attorney's fees and sanctions.

DONE AND ORDERED at West Palm Beach, Florida this 15th day of May, 1992.

Richard B. Burk
RICHARD B. BURK, CIRCUIT JUDGE

COPIES FURNISHED TO:
Kirk Friedland, Esq., Suite 505, 501 S. Flagler Drive, West Palm Beach, Florida 33401
Charles Brodzki, Esq., 3rd Floor, 635 Andrews Avenue, Fort Lauderdale, Florida 33301
William B. King, Esq., P.O. Box 3688, West Palm Beach, FL 33402

ORB 7247 Ps 1955

EXHIBIT "A"

Lots 27 to 45, inclusive, SUNRISE AVENUE ADDITION NO. 2 to the Town of Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida recorded in Plat Book 8, Page 69.

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certified copy

ORB 7247 Pg 1956

EXHIBIT "B"

The western 10 feet of Lot 43 of Lots 43 and 44 of BUNGALOW PARK,
an addition to the Town of Palm Beach, Florida, according to the
plat thereof in the office of the Clerk of the Circuit Court in and
for Palm Beach County, Florida, recorded in Plat Book 7, Page 26.