

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 8, 2022

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building

Re: 755 N. Lake Way – Third Strike & Stop Work Order

Date: February 17, 2022

FYI - This Memo is provided as Information Only to the Town Council

As you know, the Town has a “Three Strike Rule” for construction parking and construction site management. The regulations and process are found in the Town’s “Department of Public Works, Engineering Division, Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach” (commonly called the Right-of Way-Manual), dated May 1994, as revised through January 12, 2022. Chapter XII, Miscellaneous Provisions, contains the details of the Three Strike rules. The regulations spell out the process in which contractors can secure parking permits, the fees for various violations, and the process that must occur once a contractor receives Three Strikes – three different sets of tickets for construction violations. The applicable pages of the Right of Way Manual are attached.

755 N. Lake Way just reached the level of Three Strikes for construction violations. The first ticket was written for vehicle parking violations on April 29, 2021 by Public Works. The second ticket was written for a vehicle parking violation on November 24, 2021 by Public Works. At that time, the Town issued a courtesy Warning Notice to the contractor, Albright Construction, advising them of the issue, and describing the actions that would be taken by the parties if there is a Third Strike. Copy of the courtesy letter is attached. A third ticket was written for vehicle parking violations on December 3, 2021, by Public Works. A Pending Stop Work Order Notice (attached) was sent to the contractor December 3, 2021. The ticket was appealed by the contractor and the Public Works Director on December 7, 2021, agreed with the contractor and waived the third ticket (strike). A fourth ticket (second third strike) was issued on January 25, 2022 for parking violations by Public Works. Another Pending Stop Work Order Notice (attached) was sent to the contractor January 27, 2022. The contractor again appealed the ticket. Copies of all tickets are attached.

The regulations allow the violator to appeal the ticket(s). In this case, since the last ticket was issued by Public Works, the appeal was filed to Paul Brazil, Public Works Director, by letter dated February 1, 2022. The appeal was filed in accordance with the time allowed under the code (filed within seven (7) days). The regulations required Mr. Brazil to hear / review the

appeal (if filed) and render a ruling. Mr. Brazil found in favor of the Town, and therefore upheld the third ticket (Third Strike). This decision occurred on February 10, 2022. The Planning, Zoning & Building Department issued a STOP WORK ORDER for the entire construction project on February 14, 2022.

It is worth noting that the first two violations resulted in no appeals filed with the Town and payment in full for the citations. Both third strikes (tickets #3 and #4), both appealed by the contractor, paid the required fines. However, the regulations require an extra \$250 for the second strike and \$500 for the third strike; therefore, the contractor owes the Town an additional \$750.

The Town Council's process for this matter is contained within the Public Works "Right of Way Manual", as follows:

"When the Town Council receives a written request to lift a stop work order the Town Council shall have the power to admonish the contractor; take such action as deemed necessary to effect the stop work order on a permanent basis by nullifying the existing building permit; cause the contractor and/or property owner to enter into a binding agreement to memorialize the understandings between the Town and the contractor and/or property owner relative to all conditions placed upon the lifting of the stop work order, if applicable; establish penalties for future right-of-way violations the amount for which shall be in the sole discretion of the Town Council; collect the "3 strike" fine, plus payment of any outstanding right-of-way fines and accumulated interest, as referenced herein below and to prohibit the issuance of any additional right-of way permits for the duration of the work in question.

The fine for a third (3rd) and each subsequent strike shall be \$500 plus payment of any outstanding right of-way fines and accumulated interest unless the Town Council chooses to invoke the use of a binding agreement memorializing a penalty structure to be paid to the Town for all future right-of-way violations in excess of three (3) to be paid in accordance with the terms and conditions of the binding agreement between the Town and the contractor and/or property owner. All fines and penalties shall be paid in full prior to issuance of a Certificate of Occupancy for the construction associated with the activity that generated the fines, penalties, and interest."

Attachments: Copies of all citations
Copy of the Courtesy Notice
Copy of the two Pending Stop Work Order Notices
Copy of the last Appeal
Copy of Paul Brazil's decision regarding the appeal

WRB

Cc: Paul Brazil, Director of Public Works
Police Chief Nick Caristo