

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 12, 2022

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

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

Re: 257 West Indies Drive – Third Strike & Stop Work Order

Date: March 22, 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.

257 West Indies Drive recently reached the level of Three Strikes for construction violations. The first ticket was written for vehicle parking violations on October 22, 2021 by Public Works. The second ticket was written for a vehicle parking violations on November 18, 2021 by Public Works. At that time, the Town issued a courtesy Warning Notice to the contractor, Willoughby Construction LLC, 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. The third ticket was written for Saturday work on March 5, 2022, by Code Enforcement, a division of the Police Department. Copies of all tickets are attached. The Pending Stop Work Order Notice (attached) was sent to the contractor March 10, 2022.

The regulations allow the violator to appeal the ticket(s). In this case, since the last ticket was issued by Code Enforcement, the appeal was filed to Police Chief Nick Caristo, by letter dated March 15, 2022. The appeal was filed in accordance with the time allowed under the code (filed within seven (7) days). The regulations required Chief Caristo to hear / review the appeal (if filed) and render a ruling. Chief Caristo found in favor of the Town, and therefore upheld the third ticket (Third Strike). This decision occurred on March 16, 2022. The Planning, Zoning & Building Department issued a STOP WORK ORDER for the entire construction project on March 18, 2022.

The contractor has paid all fines and fees at this time.

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."

Any motion to resolve this matter should include "waiving the third strike" and "granting the ability for the contractor to apply for future right of way permits".

Attachments: Copies of the three citations
Copy of the Courtesy Notice
Copy of the Pending Stop Work Order Notice
Copy of the Appeal
Copy of Chief Caristo's decision regarding the appeal

WRB

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