

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 13, 2022

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

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

Re: 246 Seaspray Avenue – Third Strike & Stop Work Order

Date: September 6, 2022

FYI - This Memo is provided as Information 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.

246 Seaspray Avenue recently reached the level of Three Strikes for construction violations. The contractor is Beacon Construction Group Inc. There are actually four recent violations. The first and second violations were issued by Public Works last year. The third violation was issued by Code Enforcement early this year. The fourth violation was issued by Police on August 24, 2022. Copies of all violations are attached. The Pending Stop Work Order Notice (attached) was sent to the contractor August 25, 2022.

The regulations allow a time frame for the violator to appeal the ticket(s). In this case, since the last violation was issued by Police, the appeal was filed to Chief Nicholas Caristo. 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 fourth violation (Third Strike). This decision occurred on August 29, 2022. The Planning, Zoning & Building Department will issue a STOP WORK ORDER for the entire construction project on September 7, 2022.

The contractor owes the Town \$500.00 in fines and fees, at this time, possibly more. We are researching the payment history regarding the earlier fines.

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.

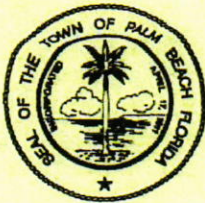
The fine for a third (3rd) and each subsequent strike shall be \$500 plus payment of any outstanding right of-way fines and accumulated interest unless the Town Council chooses to invoke the use of a binding agreement memorializing a penalty structure to be paid to the Town for all future right-of-way 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 four violations
Copy of the Pending Stop Work Order Notice
Appeal Letter from the contractor
Town Decision on the Appeal

WRB

Cc: Paul Brazil, Director of Public Works
Police Chief Nicholas Caristo
Debby Moody



PW- 5533

PUBLIC WORKS DEPARTMENT
(561) 838-5440

R.O.W. VIOLATION NOTICE

NAME: Bacon Construction DATE: 8/17/21JOB ADDRESS: 246 Seaspray

- | | |
|---|-------------------------------|
| <input type="checkbox"/> Working in right-of-way without permit | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Failure to have permit on job | \$ 150 X _____ = _____ |
| <input checked="" type="checkbox"/> Construction parking without permit* <i>strikes</i> | \$ 150 X _____ = <u>\$900</u> |
| 1st = \$150 2nd = \$250 and thereafter = \$500 | |
| <input type="checkbox"/> Inadequate Maintenance of Traffic | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Right-of-way littered by site dirt or debris | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Failure to maintain safe sidewalk | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Failure to carry-out permit terms/conditions | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Storage of materials in right-of-way | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Use of right-of-way as work area | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Damage to infrastructure in right-of-way | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Dewatering without a permit | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Illegal discharges to Town sewers** | \$ 500 X _____ = _____ |
| <input type="checkbox"/> Other _____ | \$ _____ X _____ = _____ |
| <input type="checkbox"/> 2nd and added days of violation, double fine | \$ _____ X _____ = _____ |

TOTAL FINE: \$900

Total fine to be paid within 10 working days to: Town of Palm Beach, Finance Dept., PO Box 2029, Palm Beach, FL 33480, may also be paid in person at 360 S. County Road, Palm Beach, FL 33480. Please attach a copy of this violation with payment, check must reference violation number. No further permits will be issued until fine is paid. Should you wish to contest this violation call the Public Works Office at 561-838-5440.

* Parking violations are per vehicle per day. Parking placard must be displayed in vehicle.

** Fine plus clean-up cost.

*** Includes but not limited to:

Dumpster in Right of Way - \$100 per incident.

Right of Way restoration - \$30 per day until restored.

ISSUER: Chet Paves

white/violator

yellow/PW

pink/issuer



STRIKE 2

PW- 5691

PUBLIC WORKS DEPARTMENT
(561) 838-5440

R.O.W. VIOLATION NOTICE

NAME: Beacon / Builix DATE: 12.13.21

JOB ADDRESS: 246 Seaspark

- | | |
|--|--------------------------------|
| <input checked="" type="checkbox"/> Working in right-of-way without permit | \$ 150 X <u>1</u> = <u>150</u> |
| <input type="checkbox"/> Failure to have permit on job | \$ 150 X _____ = _____ |
| <input checked="" type="checkbox"/> Construction parking without permit*
1 st = \$150 2 nd = \$250 and thereafter = \$500 | \$ 150 X <u>2</u> = <u>300</u> |
| <input checked="" type="checkbox"/> Inadequate Maintenance of Traffic | \$ 150 X <u>1</u> = <u>150</u> |
| <input type="checkbox"/> Right-of-way littered by site dirt or debris | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Failure to maintain safe sidewalk | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Failure to carry-out permit terms/conditions | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Storage of materials in right-of-way | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Use of right-of-way as work area | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Damage to infrastructure in right-of-way | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Dewatering without a permit | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Illegal discharges to Town sewers** | \$ 500 X _____ = _____ |
| <input type="checkbox"/> Other _____ | \$ _____ X _____ = _____ |
| <input type="checkbox"/> 2nd and added days of violation, double fine | \$ _____ X _____ = _____ |

Builix loading in R.O.W.
Builix - Parking in R.O.W.

TOTAL FINE: 600

Total fine to be paid within 10 working days to: Town of Palm Beach, Finance Dept., PO Box 2029, Palm Beach, FL 33480, may also be paid in person at 360 S. County Road, Palm Beach, FL 33480. Please attach a copy of this violation with payment, check must reference violation number. No further permits will be issued until fine is paid. Should you wish to contest this violation call the Public Works Office at 561-838-5440.

* Parking violations are per vehicle per day. Parking placard must be displayed in vehicle.

** Fine plus clean-up cost.

*** Includes but not limited to:

Dumpster in Right of Way - \$100 per incident.

Right of Way restoration - \$30 per day until restored.

ISSUER: [Signature]

white/violator

yellow/PW

pink/issuer



TOWN OF PALM BEACH

POLICE DEPARTMENT

Code Enforcement Unit

Notice of Violation

10175



Marcelo Nakaoishi
Respondent's Name

Beacon Construction Group
Name of Company/Resident/Business

Respondent's Address

561-845-5130
Property/Business Address

YOU ARE NOTIFIED that on Thursday / Feb 10, 2022 at 0847 hours,
(day) (date) (time)

a violation of Working/making noise at 0847 hours
(description of violation)

which violate the following Town of Palm Beach Code of Ordinances: 42-199
(chapter and section)

occurred at: 246 Seaspray Ave Palm Beach FL 33480
(violation address)

YOUR OPTIONS ARE INDICATED BELOW:

- ☒ 1) YOU MAY ADMIT to the violation by making payment by mail or in person between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday, at the Town's Finance Department at 360 South County Road., Palm Beach, Florida 33480. **NO LATER THAN 5:00 P.M. ON THE MONDAY BEFORE THE SCHEDULED HEARING NOTED BELOW.** The fine amount is \$ 250.00
OR

YOU MAY ELECT TO APPEAR IN PERSON before the Code Enforcement Board on Thursday, 3/18/2022 at 2 P.M. in the Town Council Chambers, Town Hall, located at 360 South County Road., Palm Beach, Florida 33480. For further information call 561/227-7080

- ☐ 2) THIS CASE WILL BE HEARD BEFORE THE CODE ENFORCEMENT BOARD on Thursday, _____ at 2 P.M. in the Town Council Chambers, Town Hall, located at 360 South County Road., Palm Beach, Florida 33480. For further information call 561/227-7080

I ACKNOWLEDGE RECEIPT OF THIS CODE ENFORCEMENT NOTICE OF VIOLATION

[Signature]
Signature of Respondent

This will be your only notice of the hearing. Failure to pay the fine or appear at the hearing will result in this matter being held in absentia. The maximum fine imposed may be \$250 for a first offense, \$500 for repeat offenses, or a maximum of \$5,000 if irreparable in nature, in addition to the administrative costs.

J. Felix/9090
Code Enforcement/Police Officer - I.D.

Feb 10, 2022
Date

0853 hrs.
Time

22-041043
Case/CAD #

I WISH TO ADMIT TO THE CHARGES, WAIVE MY RIGHT TO A HEARING AND PAY FINE.

Signature of Respondent

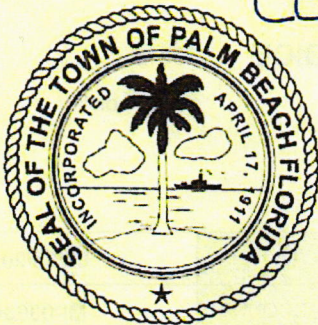
WHITE - PD Case File

BLUE - PD Log

GREEN - Finance

CANARY - Respondent

CE 22-299



CE 22-1526

PD-00376

POLICE DEPARTMENT
(561) 838-5454**R.O.W. VIOLATION NOTICE**NAME: Beacon Construction Co. Inc. DATE: 8-24-16JOB ADDRESS: 246 Saussey Ave Palm Beach FL 33480

- | | |
|---|-----------------------------------|
| <input checked="" type="checkbox"/> Working in right-of-way without permit | \$ 150 X <u>1</u> = <u>150.00</u> |
| <input type="checkbox"/> Failure to have permit on job | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Construction parking without permit*
1 st = \$150 2 nd = \$250 and thereafter = \$500 | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Inadequate Maintenance of Traffic | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Right-of-way littered by site dirt or debris | \$ 150 X _____ = _____ |
| <input checked="" type="checkbox"/> Failure to maintain safe sidewalk | \$ 150 X <u>1</u> = <u>150.00</u> |
| <input type="checkbox"/> Failure to carry-out permit terms/conditions | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Storage of materials in right-of-wy | \$ 150 X _____ = _____ |
| <input checked="" type="checkbox"/> Use of right-of-way as work area | \$ 150 X <u>1</u> = <u>150.00</u> |
| <input type="checkbox"/> Damage to infrastructure in right-of-way | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Dewatering without a permit | \$ 150 X _____ = _____ |
| <input type="checkbox"/> Illegal discharges to Town sewers** | \$ 500 X _____ = _____ |
| <input type="checkbox"/> Other _____ | \$ _____ X _____ = _____ |
| <input type="checkbox"/> 2nd and added days of violation, double fine | \$ _____ X _____ = _____ |

TOTAL FINE: 11 450.00

Total fine to be paid within 10 working days to: Town of Palm Beach, **Finance Dept.**, P.O. Box 2029, Palm Beach, FL 33480, may also be paid in person at 360 S. County Road, Palm Beach, FL 33480. Please attach a copy of this violation with payment, check must reference violation number. No further permits will be issued until fine is paid. Should you wish to contest this violation call the Police Department at 561-838-5454.

*Parking violations are per vehicle per day. Parking placard must be displayed in vehicle.

**Fine plus clean-up cost.

***Includes but not limited to:

Dumpster in Right of Way \$100 per incident.

Right of Way restoration - \$30 per day until restored.

ISSUER T. F. [Signature] 2022-234065

white/violator

yellow/PW

pink/issuer



TOWN OF PALM BEACH
Finance Department
360 South County Road
PO Box 2029
Palm Beach, FL 33480
(561) 838-5444

INVOICE

79016

Page 1 of 1

DATE	08/25/2022
ACCOUNT	MI-000306
AMT DUE	500.00

BEACON CONSTRUCTION GROUP INC
3728 GEORGIA AVE
1C
WEST PALM BEACH, FL 33405

AMOUNT PAID _____



PAY YOUR STATEMENT ONLINE AT: [HTTPS://TOWNOFPALMBEACH.COM/EDENAR](https://TOWNOFPALMBEACH.COM/EDENAR)

TOWN OF PALM BEACH

MAKE CHECKS PAYABLE TO TOWN OF PALM BEACH
PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

DESCRIPTION	AMOUNT
FINE3-STRIKE RULE ALL SUBSEQ STRIKE 4. FINE PER RES.001-2022 246 SEASPRAY AVE	500.00
Total Amount Due:	500.00
STRIKE 4. FINE PER RES.001-2022 246 SEASPRAY AVE	

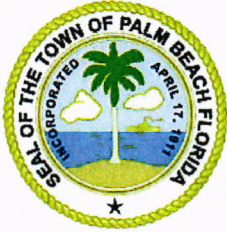
ACCOUNT NO. MI-000306

PAYABLE UPON RECEIPT

500.00

Please Remit to: TOWN OF PALM BEACH
Finance Department
360 South County Road
PO Box 2029
Palm Beach, FL 33480

Pay your Statement online at: <https://TownofPalmBeach.com/EDENAR>
Log in or Register as a New User and connect to your account by entering your Account No and Invoice number.



TOWN OF PALM BEACH
Planning, Zoning & Building Department

August 25, 2022

Via email: nicole@beaconconstructiongroup.com; kevinwaldman70@gmail.com

Beacon Construction Group Inc
% Michael Conville
3728 Georgia Ave, 1C
West Palm Beach, FL 33405

Re: Construction Parking & Construction Site Management Citations – 246 Seaspray Avenue, B-21-91258
STOP WORK ORDER PENDING

As you know, the Town of Palm Beach Standards Applicable To Public Rights-Of-Way And Easements Within The Town Of Palm Beach regulates the number of construction-related vehicles that can be parked on Town streets in conjunction with building project sites within the Town and other construction site matters. Attached to all construction permits issued to a job is information regarding these regulations.

At the March 8, 2022, Town Council meeting, Council lifted the stop work order for your project after you received three strikes.

This letter is to serve as notice that on four separate occasions you have received citations:

- Strike 4 August 24, 2022 (PD-00376 Working in right-of-way without a permit, failure to maintain safe sidewalk, Use of right-of-way as work area)
- Strike 3 February 10, 2022 (NOV10175 Working/Making Noise at 0847 hrs)
- Strike 2 December 13, 2021 (PW-5691 Construction Parking for 2 vehicles)
- Strike 1 August 17, 2021 (PW-5533 Construction Parking for 1 vehicle)

Therefore, under the Town's rules (referred to as the "3-strike" rule), the Chief of Police has notified the Planning, Zoning & Building Department of these violations, and requested that a **"Stop Work"** order be issued as allowed by Section 18-204 of Town Code.

An appeal to the Chief of Police needs to be submitted in writing within seven (7) calendar days of the date of issuance of the citation. If an appeal is denied or is not filed in a timely fashion, a "Stop Work" order will be issued by the Building Official effective the end of the working day September 1, 2022. After that date, no work may be performed at the site under any permits issued by the Town of Palm Beach.

All requests to lift a **"Stop Work"** order would need to be decided by the Town Council. The next Town Council meeting date is Tuesday, September 14, 2022. In order for this item to be considered at that meeting, you would need to submit a written request to me no later than **Wednesday, September 7, 2022, prior to 5:00 PM.**

Per Town Resolution No. 001-2022, because you have received four strikes, a fine in the amount of \$500 is being imposed and is payable immediately to the Town of Palm Beach. This fine is in addition to all right-of way fines referenced above. Invoice # 79016 is attached.

Sincerely,

Wayne Bergman

Wayne Berman
Director, Planning, Zoning & Building Department

Post Office Box 2029 * 360 South County Road * Palm Beach, FL 33480 * (561) 838-5430

cc: Cynthia Abbott, Kevin Waldman, 246 Seaspray Avenue, Palm Beach, FL 33480
Kirk Blouin, Town Manager
H. Paul Brazil, Public Works Director
Nicholas Caristo, Police Chief
Benjamin Alma, Support Services Manager

Kevin Waldman

246 Seaspray Avenue Palm Beach, FL 33840 | 917-327-8967 | Kevinwaldman70@gmail.com

8/26/2022

Chief Caristo
Police Chief
Town of Palm Beach

Re: Stop Work Order Appeal

Dear Chief Caristo:

I am in receipt of the "Stop Work Order Pending" notice dated August 25th, 2022 and was made aware of the situation by my general contractor at the time of the incident on August 24th, 2022 as I have not been on location since June 6th.

I would like for you to consider this appeal for the stop work order based on the following:

My understanding of the situation is that the sub-contractor Connery Concrete was due to complete a power washing of the driveway and set to arrive at 10am whereby my general contractor was to meet them at the site. He was instructed to park on the front lawn at the site. The Connery Concrete sub-contractor arrived approximately 9:45am, 15 minutes early and set up his equipment and truck location. He inadvertently parked in front of the house and extended his power washing hose across the sidewalk.

The sub-contractor clearly made a human error and was in violation of the regulation, however I assure you there was no willful intent or lack of respect for town policies. It was a mistake, and I am certain he thought he was doing a good job arriving early and attempting to complete what was a 20-minute project.

The general contractor arrived on the site around the same time (approximately 10am) the Code enforcement Officer ("CEO") was about to write the violation. The General Contractor informed the CEO of the mistake/error and that he would have the truck moved onto the property to resolve the issue immediately. The General Contractor also reached out directly to Mr. Burgoon to explain the situation at the time of the incident whereby Mr. Burgoon apparently indicated the problem could be addressed on site but at the CEO's discretion. The CEO continued to issue the ticket irrespective of the general contractor's ability to correct the mistake immediately and Mr. Burgoon's comment.

The situation was unfortunate and only leads to additional construction time, cost, and aggravation for everyone. I appreciate the town is looking to reduce congestion, enforce rules and regulation and hold people accountable. We have worked very hard and at a significant incremental cost to ensure that my construction project remains compliant and can be completed expeditiously.

As a resident and member of this community it remains unclear to me why the ability to correct the situation at the time to avoid further delays and cost was not the objective. Rather the issuance of a violation was preferred. This infraction was not intended to violate the town's policies it was human error by a sub-contractor that could have been mitigated immediately at 10am in the middle of the

Summer on an empty street as we work to complete my project prior to an increase in the town's population and avoid any further disruption to my neighbors.

Just to be clear, I am not advocating that anyone should avoid rules or regulations, however I am suggesting that when the ability arises to resolve issues maybe that path is more conducive to what the town is trying to achieve versus a penal approach (i.e. issuing tickets.)

Not dissimilar to how I have witnessed Palm Beach Police Officers approach drivers who may be illegally parked, not with a ticket but with direction and courtesy to correct or resolve the situation. We are a community, and in this situation, that concept was lost.

I accept responsibility and want to ensure you and the Town Council that we respect the rules and set out to do everything possible to ensure they are followed, but I hope we all recognize that there are times when inadvertent mistakes occur. Unfortunately, we were not afforded the opportunity to resolve this mistake within minutes of it occurring to avoid further delays, additional costs, and everyone's time.

There is no nefarious behavior or intent to usurp the rules, we are trying very hard to complete a project inside of an environment that is very challenging, with difficulty securing the necessary permits and parking passes, managing uncertain supply chains and labor availability. This effort is underway for the benefit of my family, the street as well as the town and I believe in certain circumstances, such as this incident, and as a resident of this community we should be afforded the opportunity to address issues and mistakes when possible and not be treated punitively or as an adversary.

Given the facts as I understand them, I would appreciate your consideration in eliminating the stop work order aspect of this violation to allow my project to finish with no further delays or disruption to our Seaspray Neighbors.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized capital letter 'K' followed by a horizontal line extending to the right.

Kevin Waldman



TOWN OF PALM BEACH POLICE DEPARTMENT

DEDICATED TO EXCELLENCE



August 29, 2022

Mr. Kevin Waldman
246 Seaspray Avenue
Palm Beach, FL 33401

Re: Code Violations - 246 Seaspray Avenue

Dear Mr. Waldman,

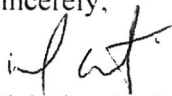
I am in receipt of your appeal request.

Town Ordinance allows ten days after each violation to contest the violation. You have elected to contest Notice of Violation #376. It was issued on August 24, 2022, for working in a right-of-way without a permit, for failure to maintain a safe sidewalk, and for use of the right-of-way as a work area. According to the Planning, Zoning and Building Department, this is your fourth strike. Additionally, there were two separate incidents not noted. On November 23, 2021, under Code Enforcement Case #21-1374, Code Enforcement issued a verbal warning for a right-of-way violation, and on February 08, 2022, Code Enforcement issued another verbal warning for a right-of-way violation.

After thorough review of the Town Ordinances and the Town's Right-of Way Manual, along with the violations and the subsequent actions of the construction staff, the request for dismissal of the violation is denied.

With the recent changes in Town ordinances and the Town's commitment to strongly enforce construction site violations, I have an obligation to ensure consistencies in the enforcement and appeal process. You may contact the Planning, Zoning, and Building Department for any next steps in appearing before Town Council or restarting work.

Sincerely,


Nicholas Caristo
Chief of Police

cc: Paul Brazil, Director of Public Works
Wayne Bergman, Director of Planning, Zoning and Building