

# INDIAN SHORES

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## SPECIAL MAGISTRATE PUBLIC HEARING MINUTES

**FEBRUARY 14, 2018**

The Public Hearing convened at 1:01 p.m. by Special Magistrate, Herbert E. Langford.

Present were: Herbert E. Langford, Special Magistrate; Regina Kardash, Town Attorney; Bonnie Dhonau, Town Administrator; Greg Yantorno, Building Official; Marshall Eiss, Pinellas Suncoast Fire & Rescue District (PSFRD) Fire Inspector; and Darlyn Stockfish, Administrative Specialist. In addition, Attorney Paul DeCailly, DeCailly Law Group and Lynn Rogacki, Respondent.

Also present: PSFRD Fire Commissioner Larry Schear, Vice Mayor Diantha Schear and Councilor Mike Hackerson. There were also many members of the public present.

### **1.0 Consideration of condition at 19201 Gulf Boulevard, Indian Shores, FL 33785 in regard to Code Enforcement Case No. 2017-01, violations of Section 38-36, 38-37, 38-38, 18-122 and 18-304 of the Town of Indian Shores Code of Ordinances.**

**Special Magistrate Herbert E. Langford** performed the Oath of Affirmation for those that could have been called to testify.

**Town Attorney Regina Kardash** opened with a recapture of events to date stating that this has been an ongoing process for approximately two years to bring the building located at 19201 Gulf Boulevard into compliance with the Town and State of Florida's Life Safety and Building Codes. It came before the Special Magistrate initially in March 2017 with a ruling to come into compliance by July 6, 2017. There was another hearing scheduled for September that was delayed due to Hurricane Irma. A hearing scheduled in December and

**Patrick C. Soranno**  
Mayor

**Diantha Schear**  
Vice Mayor

**Mike Hackerson**  
Councilor

**Michael (Mike) Petrucci**  
Councilor

**William F. (Bill) Smith**  
Councilor

**Bonnie Dhonau**  
Town Administrator

**Terry E. Hughes**  
Chief of Police

**Susan L. Scrogam**  
Director of Finance  
and Personnel

**Elaine N. Jackson, MMC**  
Town Clerk

**Gregory Yantorno**  
Building Official

**Regina Kardash, Esq.**  
Town Attorney

another hearing in January were both stipulated to be continued to today's hearing.

**Attorney Kardash** presented one updated Affidavit of Non-Compliance by Pinellas Suncoast Fire and Rescue District addressing the outstanding fire safety codes. The re-inspection of the property on February 9, 2018, revealed the chimney was capped as required; however, the fireproofing objects had not yet been completed and therefore failed.

**Attorney Paul DeCailly** confirmed that he had in his possession the certificate that the fireproofing was completed over the weekend so everything is in compliance.

**Attorney Kardash** also presented an updated Affidavit of Compliance by the Town of Indian Shores Building Official, Greg Yantorno, dated August 18, 2018, in respect to the electrical. She explained that the third document submitted is the Town's most recent Affidavit of Costs by Interim Town Clerk Elaine Jackson dated February 13, 2018.

**Attorney Kardash** reported that each separate violation can carry under State law a fine up to \$250 per violation per day not in compliance following the Special Magistrate's ruling of July 6, 2017.

**Attorney Kardash** stated that this has been an ongoing safety issue in which the Fire Department and Town Building Officials had multiple meetings with Mr. Michael Rogacki since 2015 to attempt to get them into compliance. She stated that these life safety issues affect everyone who is a patron of the bar and all the surrounding properties. She asked that the full amount of the fine be imposed due to these ongoing life safety issues and danger of fire.

**Special Magistrate** confirmed the days of not in compliance and dollar amounts of the maximum fines to be as follows:

Electrical (7/6/17-8/18/17) 43 days x \$250/day =	\$ 10,750
Fireproofing (7/6/17-2/11/18) 220 days x \$250/day =	\$ 55,000
Chimney (7/6/17-2/9/18) 217 days x \$250/day =	<u>\$ 54,250</u>
Maximum Total Non-Compliance Fines =	\$120,000
Other Costs Incurred:	

February 13, 2018 -Town Affidavit of Costs is \$2,172.51 and April 27, 2017, Affidavit of Cost was \$13.12.

**Attorney Kardash** rested with the right to call the Building Official and Fire Inspector on any further testimony.

**Special Magistrate** called the Council for respondents.

**Attorney DeCailly** said he is disputing the number of days that it took to come into compliance as many of the issues were out of his clients' control.

**Paul DeCailly** called his first witness - Kim Wraight, Director of A-1 Certified Flame Proofing, Inc.

**Kim Wraight** reported that she was contacted by Mr. Jay Wagstaff (prior manager) on October 24 and scheduled October 27 for a preliminary view of the establishment. Her biggest concern for fireproofing the mementos (clothing, currency, etc.) that hung in the building was the currency which needed to be at a Class A Fire Resistance Level. She explained the tedious process of several weeks of in-field testing chemicals and treatments for fireproofing the currency and finally getting the Class A result for Fireproofing Certification.

**Kim Wraight** also videotaped the entire inside so that they had a record of everything that was fireproofed to protect the fireproofing certificate she had signed. She met with Fire Inspector Marshall Eiss a few times during that process. The entire process took until the end of January 2018 to complete at a total cost of \$7,000.

**Kim Wraight** worked with the owner, Ms. Lynn Rogacki, on establishing a designated area (hanging corkboard) that visitors and customers could leave mementos/currency, which is a long-time custom of Mahuffer's and its patrons and visitors. This designated area is to be inspected and fireproofed by Ms. Wraight quarterly for continued Class A Certification.

**Attorney Kardash** cross-examined confirming the initial date of contact as October 24, 2017, and continued testing until February 11, 2018.

**Attorney DeCailly** called his next witness Timothy Palmer, Mahuffer's Bar Manager, who replaced prior Bar Manager Jay Wagstaff on December 23, 2017.

**Timothy Palmer** was aware of the electrical issues and fireplace chimney cap. He reported they had to get three contractors to handle the electrical issues due to different reasons.

**Attorney DeCailly** asked about Mike Rogacki's availability at the time Timothy Palmer was bar manager.

**Timothy Palmer** replied that he had known him for over three years and noticed a change in his presence at the bar due to illness. He said that Jay Wagstaff had been responsible for the initial electrical and fireproofing needs.

**Timothy Palmer** confirmed that he has a commitment to the Town to make Mahuffer's a safe place for visitors.

**Attorney Kardash** cross-examined confirming the date being December 23 that Tim Palmer took over as bar manager and that he did not have any direct involvement prior to that time.

**Timothy Palmer** confirmed that he put the chimney cap on directly after the last hearing date; however, he did not call for a fire or building inspection. He reported that Fire Inspector Marshall Eiss came out a couple of days after the cap was put back on the chimney.

**Attorney DeCailly** called Lynn Rogacki, Owner of Mahuffer's, as witness.

**Attorney DeCailly** verified with Lynn that the running of the establishment had been the responsibility of Mike Rogacki and Jay Wagstaff until the passing of Mike Rogacki on November 28 when Lynn Ragacki took over. Timothy Palmer took over as bar manager on December 23 when Jay Wagstaff quit.

**Lynn Rogacki** stated that she was aware of the continued work that had to be done along with the \$15,000 worth of electrical work. She explained they framed the fireplace so that it could not be used, and it had also been capped.

**Lynn Rogacki** learned of the fireproofing need from Jay Wagstaff and she then made her own contact with A-1 Certified Flameproofing for follow-up.

**Lynn Rogacki** confirmed the recent designation of a cork board to be used for hanging visitor mementos that would later be fireproofed and that the quarterly fireproofing will be a continuing cost. Staff have been trained on this new procedure. She also confirmed that the bar is

known worldwide and the importance of striking a balance between what the 45-year Mahuffer's Bar is known for and being in compliance with the Town Codes.

**Attorney Kardash** showed Lynn certified mailings with her Michigan address on them and she confirmed the address as hers. She also asked Lynn to identify a document that declared the value of the electrical permit at \$6,500.

**Lynn Rogacki** further reported that they paid \$15,000 for the electrical work, and that she had not contacted the electricians but the past manager and Mike Rogacki had.

**Attorney DeCailly** called Marshall Eiss, PSFRD Fire Inspector, as witness.

**Paul DeCailly** asked what made up PSFRD's jurisdiction.

**Marshall Eiss** responded that their jurisdiction consisted of Indian Shores, Indian Rocks Beach, Belleair Shores, Belleair Beach and the Oakhurst area of the mainland.

**Attorney DeCailly** asked whether other establishments within their jurisdiction needed to comply with the fire code.

**Marshall Eiss** confirmed that all should.

**Attorney Kardash** asked Fire Inspector Marshall Eiss to go over the inspection dates (July 14 reinspection w/8 deficiencies not corrected; agreed to give them another 30 days for extension to get completed; reinspection of August 18 with our Building Official where we found electrical was completed but the fire cap was not installed and the fireplace was not yet blocked off. November 15 another reinspection with 4 violations still not correct. Then February 9 on the roof cap where Ms. Rogacki confirmed they would get the roof cap reinstalled.

**Marshall Eiss** confirmed that Mahuffer's never made the effort to contact for inspections.

**Attorney Kardash** called Gregory Yantorno, Town Building Official, as witness.

**Greg Yantorno** described the electrical permit and application process in this case. The permit was issued July 10, 2017, and was open until the final inspection on August 18, 2017.

**Greg Yantorno** confirmed that the total value of the electrical work was \$6,500. He explained that the permit fee is based on the valuation of the work, and that the higher the value of work, the higher the permit fee.

**Attorney DeCailly** cross-examined asking whether it was unusual for a project to be estimated at one amount and come in at another amount later.

**Greg Yantorno** said it was unusual for a building project to come in under budget. He does not see final invoices after a job is completed. Typically jobs have a contract and changes could be made, but he is normally not part of that process. It is between owner and contractor.

**Greg Yantorno** further explained how general contractor and any other subcontractors have to apply for their own permits in Indian Shores.

**Special Magistrate** called the Conclusion of Testimony and recessed at 2:17 p.m. for a break.

**Special Magistrate** called the Hearing back in session at 2:28 p.m.

Closing arguments were heard next.

**Attorney Kardash** referenced Town Ordinance under Article V; Section 2-208 – Administrative fines and liens – “. . .if not been complied with by the set time, may order the violator to pay a fine which shall not exceed \$250.00 per day for a first violation for each day the violation continues to exist past the date set for compliance or \$500.00 per day for a repeat violation for each day the repeat violation is found to have occurred by the code inspector.”

**Attorney Kardash** reiterated that these were life, health and safety issues that could have caused grave danger, and the Town's focus was to protect the property itself as well as the surrounding properties. The Town had been in discussions with Mahuffer's over a long period of time trying to get these issues corrected prior to having it brought to a Special Magistrate hearing. The Special Magistrate ruled that they come into compliance by July 6, 2017, which came and went and not even an electrical permit was applied for till the day after the compliance date. In addition, Mahuffer's did not contact anyone for fireproofing till the end of October 2017. She reported that it was always under the Town's initiative rather than the property owner to make contact that anything had been done to come into compliance.

**Attorney Kardash** conveyed that the Town stands at its request to impose the total \$120,000 fine.

**Special Magistrate** asked for and reviewed a copy of Sec 2-208. He confirmed that there had been no previous citing of violation. He went over that the minimum fine imposed could be \$0 and the maximum could be \$250 per day. He went on to say that he would be considering this all as first time violations and would take in the gravity of the incompliance to make his decision.

**Attorney DeCailly** inquired about what factors the Special Magistrate would consider when making his ruling highlighting that general equity and fairness should also be taken into consideration. He implied that Mahuffer's was targeted and the only establishment treated like this. He asked that the Special Magistrate look at time in which they were allowed to exist as is and the uniformity by the Fire Inspector to make other establishments in his jurisdiction comply to the Life Safety Code.

**Attorney DeCailly** also mentioned the challenges (i.e. hurricane, illness, death, etc.) that Mahuffer's was faced with. In addition, there were challenges of the timeframe of fireproofing and developing a new procedure to address the long-standing tradition of leaving mementos and currency to hang on the wall at this establishment.

**Attorney DeCailly** stated that the July 6 deadline was a lofty goal to be able to complete all that needed to be done. The order as a whole could not have been fully complied with until the fireproofing portion could be worked out.

**Attorney DeCailly** requested that a fine should not be imposed as they have come a long way to keep Mahuffer's look, feel and character and also come into compliance with the Life Safety Code. He reiterated that they are committed to maintain their compliance and if a fine is really necessary, it should be minimal.

**Special Magistrate** asked for clarification of other ordinances and fines. They reviewed Sec. 38-38 Fire Protection Requirements, Sec. 38-37 Codes on File, Sec. 38-36 Adoption of Fire Prevention Codes, and Sec 18-122 Building Code/Electrical.

**Attorney DeCailly** argued that it should not be five different orders but should be rolled into one order due to the similarity, challenges with the amount of work to be completed and time allotted.

**Attorney Kardash** responded that the Town believes they are separate violations. She emphasized that the Town has not been unsympathetic to their issues which is demonstrated by the hearing postponements and more time allowed to comply.

**Attorney Kardash** explained that the Town of Indian Shores had specifically adopted the Life, Health and Safety Code, Chapter 38, into their ordinances. That is why they are here before Town and not before PSFRD. She further explained that other jurisdictions should not be taken into consideration as the establishment exists within the Town of Indian Shores. She reiterated that all along they had the ability to comply but did not put forth the effort which is evident from them not coming into compliance by the July 6 deadline. Further no one was even contacted on the fireproofing until late October.

**Special Magistrate** explained that he would take all these things into consideration and justified the July 6, 2018, deadline to come into compliance.

Arguments were closed by Special Magistrate.

**Special Magistrate** ruled that the fireproofing, chimney and fireplace would roll into one final violation amount as a total of \$250 for the three sections- 38-36, 38-37 & 38-38.

The electrical would be a separate violation. They came into compliance on August 18 (43 days). He saw no intervening problem with Rogacki's illness for this violation and permits were not pulled till later. There would be zero credit for electrical and fined at \$250 per day.

**Special Magistrate** ruled a 30 days credit for loss of time due to Hurricane Irma which affects the fireproofing timeframe.

He ruled 60 days credit off the fireproofing, fireplace and chimney for Mr. Mike Rogacki's illness and lowered the fine to \$100/day when Ms. Rogacki took over to comply.

He will include the Affidavits of Costs and his Special Magistrate billing rate including today's hearing time.

**Special Magistrate** asked if the Town and Council prefer that he prepare the order or that one of the attorneys could prepare to save on billing time. However, it was determined that he would complete the Order and send it to Indian Shores with his final invoice.



**Special Magistrate Herbert Langford** explained that this is a quasi-judicial hearing. Although the public is entitled to attend, the hearing is run like the regular court system and public comment is not taken.

The Special Magistrate Public Hearing adjourned at 3:45 p.m.



Darlyn A. Stockfisch  
Administrative Specialist