Petition for Binding Interpretation (Petition No. 207).

Pursuant to section 61G20-2.007(5) of the Florida Administrative Code, the undersigned City of Riviera Beach Building Official provide this response to the above referenced Petition.

The Petition in this matter seeks an interpretation of the City of Riviera Beach's (City) Florida Building Code administrative amendments and Florida Statutes regarding the authority of the City's former acting Development Services Director's authority to revoke a City issued permit. The Petition fails to disclose the full scenario regarding the City permit at issue and how it was properly revoked for zoning issues. Further, while the City does not take issue with the question as it applies to the Building Official's duties and responsibilities, the issue with the building portion of the permit has been appropriately addressed by subsequent City Building Officials.

On April 9, 2019, Halo Development LLC, the property owner, and its contractor applied for a fence permit from the City. The permit application is attached as **Exhibit "1"**. As noted on the application's Owner's Affidavit, the Owner certified by signing the application that all work will be done "in compliance with all applicable laws regulating construction and zoning." This same requirement is set forth in the City's Code of Ordinances, Section 22-34, entitled "Construction not in compliance with codes prohibited", which states that all construction shall be done in accordance with the codes adopted in this article [Article II Building and Technical Codes] and "all other applicable provisions of this Code."

On April 23, 2019, the City's former Building Official Ladi March issued the permit without the usual coordination with the City's Planning and Zoning division. On April 26, 2019, the City's former Acting Director of Development Services, Jeff Gagnon, called and emailed the property owner and its contractor and informed them that the permit was issued in error and further City staff review was required. Mr. Gagnon's email is attached as **Exhibit "2"**. On May 19, 2019, Mr. Gagnon, drafted a memorandum regarding the zoning deficiencies in the fence application. Mr. Gagnon's memorandum is attached as **Exhibit "3"**. After Ms. March's departure from the City's employment, the City's subsequent Building Official, Judson Dulany, confirmed via email that the

resulting permit is typically called a "Building Permit" but in fact it often has dual or several purposes and in some instances has no Florida Building Code purpose whatsoever. An example of such a permit is a Landscaping Permit.

As in this case, the Building part of a permit cannot be separated out from the other aspects of the permit's necessary approvals. A permit revoked by one of the other approval authorities should have the effect of preventing the entire work from proceeding

In summary, the Petition should be denied as the permit at issue was properly revoked for zoning issues and that revocation has been subsequently confirmed by two (2) Building Officials. Further, while I agree that only a certified Building Official may revoke a permit for Florida Building Code purposes, the fence in question did not receive a proper zoning approval and therefore was properly revoked.

Michael Grimm 3-15-21

# PALM BEACH COUNTY-WIDE/MUNICIPAL BUILDING PERMIT APPLICATION FORM

City of Riviera Beach Building Services
600 W Blue Heron Blvd, Riviera Beach, FL 33404
Telephone: (561)-845-4020 Fax: (561)-845-4027

**FOR OFFICE USE ONLY**
FBC Version: _____ Permit Type: FWPP
Accepted By: _____ Application Date: _____
Application #: 19-0510216

1
**KIND of PERMIT (CHECK ONE):**
☑ PRIMARY PERMIT
☐ SUB-PERMIT - If Fee & Value of a Sub-Permit are covered under a Primary Permit, complete boxes 1, 2, 3, 4, 5, 6 & 8 only to apply. If not covered under a Primary Permit, complete the entire application to apply.

2
**PROPERTY OWNER:** HALO DEVELOPMENT
**TENANT:**
**ADDRESS:** 13901 NW 118TH AVE **UNIT:**
**CITY:** MIAMI **STATE:** FL **ZIP:** 33178
**PHONE:** 786-251-5868 **FAX:**
**EMAIL:** fane@fanelozman.com

3
**TRADE (CHECK ONE):**
☐ STRUCTURAL ☐ ROOFING ☐ ELECTRICAL
☐ MECHANICAL ☐ PLUMBING ☐ FIRE ☐ GAS
☑ OTHER: FENCE
**PRIMARY PERMIT #:**

4
**PROJECT NAME:** LOZMAN
**PCN:** 56 .43 .42 .22 .00 .001 .0050
**LEGAL DESCRIPTION:** PLEASE SEE ATTACHED
**ADDRESS:** 4601 N OCEAN DR
**CITY:** RIVIERA BEACH

5
**FURTHER WORK DESCRIPTION:** INSTALL 614' OF NEW BLACK 4' CHAIN LINK FENCE
Type of Work: ☑ New ☐ Addition ☐ Alteration ☐ Repair ☐ Demo ☐ Temporary ☐ Other
**VALUE:** $10,800 (SEE FEE SCHEDULE) **PERMIT FEE:** _____ (AS APPLIES) **NET S.F (for SFD's):** _____ (AS APPLIES)

6
☐ **OWNER BUILDER PER FL. ST. 489** (AS NAMED ABOVE, FOR CONTACT INFORMATION SEE BOX 2)
☑ **CONTRACTOR (CERT. HOLDER):** ROBERT GREENE **License #:** U10591
**DBA (COMPANY NAME):** MARTIN FENCE CO. **Contact Person:** JOHN MASTROGIOVANNI
**ADDRESS:** 862 13TH STREET **STE:** _____ **CITY:** LAKE PARK **STATE:** FL **ZIP:** 33403
**PHONE:** 561-848-2686 **FAX:** 561-848-4466 **EMAIL:** jmastro@martinfence.com

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

7 X _____
(Signature of Owner or Agent) (including contractor)
Print Name: FANE LOZMAN
NOTARY REQUIRED IF $ 2,500 OR MORE, OR FOR ALL OWNER / BUILDERS REGARDLESS OF $ VALUE STATE OF FLORIDA
COUNTY OF Palm Beach
Sworn to (or affirmed) and subscribed before me this 8 day of April, 2019, by
Fane Lozman
(Name of person making statement).
_____
(Signature of Notary Public - State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)
Personally Known X OR Produced Identification _____
Type of Identification Produced _____

8 _____
(Signature of Contractor)
Print Name: ROBERT GREENE
NOTARY REQUIRED IF $ 2,500 OR MORE, OR FOR ALL OWNER / BUILDERS REGARDLESS OF $ VALUE STATE OF FLORIDA
COUNTY OF Palm Beach
Sworn to (or affirmed) and subscribed before me this 8 day of April, 2019, by
Robert Greene
(Name of person making statement).
_____
(Signature of Notary Public - State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)
Personally Known X OR Produced Identification _____
Type of Identification Produced _____

NOLAN GREENE
Notary Public - State of Florida
Commission # FF 964476
My Comm. Expires Feb 25, 2020

NOLAN GREENE
Notary Public - State of Florida
Commission # FF 964476
My Comm. Expires Feb 25, 2020



EXHIBIT 1
tabbies

FEE SIMPLE TITLEHOLDER, BONDING COMPANY, ARCHITECT/ENGINEER AND MORTGAGE LENDER INFO IS REQUIRED WHEN THE AGGREGATE VALUE (TOTAL COST OF ALL IMPROVEMENTS & NOT JUST WORK AUTHORIZED BY THE INDIVIDUAL PERMIT) IS $2,500 OR MORE (EXCEPT HVAC REPAIR /REPLACEMENT < $7500). PLEASE ADDRESS ALL ITEMS.

9
Fee Simple Titleholder's Name (If other than owner): _____

Fee Simple Titleholder's Address (If other than owner): _____

City: _____ State: _____ Zip: _____

☐ Same as Owner

10
Bonding Company: _____

Bonding Company Address: _____

City: _____ State: _____ Zip: _____

☐ Not Applicable

11
Architect/Engineer's Name: _____

Architect/Engineer's Name Address: _____

City: _____ State: _____ Zip: _____

☐ Not Applicable

12
Mortgage Lender's Name: _____

Mortgage Lender's Address: _____

City: _____ State: _____ Zip: _____

☐ Not Applicable

**WARNING TO OWNER:**
YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS *TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE* FIRST INSPECTION.

NOTICE TO CONTRACTOR: FOR A DIRECT CONTRACT GREATER THAN $2,500 (EXCEPT FOR HVAC SYSTEM REPAIR OR REPLACEMENT LESS THAN $7500), FLORIDA STATUTES REQUIRE THE APPLICANT TO FILE WITH THE ISSUING AUTHORITY, PRIOR TO THE FIRST INSPECTION, EITHER A CERTIFIED COPY OF THE RECORDED (BY OWNER) NOTICE OF COMMENCEMENT OR A NOTARIZED STATEMENT (BY OWNER) THAT THE NOTICE OF COMMENCEMENT HAS BEEN FILED FOR RECORDING, ALONG WITH A COPY THEREOF. IN THE ABSENCE OF A CERTIFIED COPY OF THE RECORDED NOTICE OF COMMENCEMENT, NO SUBSEQUENT INSPECTIONS CAN BE PERFORMED UNTIL THE APPLICANT FILES SUCH CERTIFIED COPY WITH THE ISSUING AUTHORITY. THE CERTIFIED COPY OF THE NOTICE OF COMMENCEMENT MUST CONTAIN THE NAME AND ADDRESS OF THE OWNER, THE NAME AND ADDRESS OF THE CONTRACTOR, AND THE LOCATION OR ADDRESS OF THE PROPERTY BEING IMPROVED.

IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

***OFFICE USE ONLY BELOW THIS LINE***

13
CODE EDITION/NOTES: _____

14
USE (CHECK ONE):
☐ 1 & 2 FAMILY ☐ TOWNHOUSE ☐ CONDOMINIUM
☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
☐ AGRICULTURAL - BLDG CODE EXEMPT ☐ OTHER: _____

☐ USE CHANGE: _____

15
APPROVED BY: _____ DATE: _____
Permit Officer

AUTHORIZED FOR CERTIFICATE OF OCCUPANCY: _____ DATE: _____
Building Official or Designee

AUTHORIZED FOR CERTIFICATE OF COMPLETION: _____ DATE: _____
Building Official or Designee

## Gagnon, Jeff

| | |
|---|---|
| **From:** | Gagnon, Jeff |
| **Sent:** | Friday, April 26, 2019 4:24 PM |
| **To:** | 'mfence@martinfence.com'; 'halodevelopment1@gmail.com' |
| **Cc:** | March, Ladi; Richards, Bovell; Hayes, Clarece D |
| **Subject:** | City Building Permit Application 19-01026, 4601 N. Ocean Drive - VOID, Issued in Error |
| **Attachments:** | City Building Permit Application 19-01026 - VOID, Issued in Error 04.26.2019.pdf |

Good afternoon Martin Fence, Co. Management and Halo Development, LLC,

This email is a follow up to my phone call to the Martin Fence Co. office this afternoon (561)848-2688, indicating that City Permit 19-01026, 4601 N. Ocean Drive, associated with installation of 514' of new black 4' chain-link fence, was issued in error, is now void, and should not be relied upon for any construction or building activities (see attached). Further City staff review of the Building Permit Application submittal is required.

Additionally, our computer system indicates that the State License Number associated with Martin Fence Co. has expired. Please provide updated info as applicable. Also, Permit 14-01457 is open within our system and must be closed (see attached). Thank you.

Jeff Gagnon, AICP - Acting Director of Development Services - City of Riviera Beach, FL 33404 - JGagnon@RivieraBch.com - Phone: (561)845-4060 - Fax: (561)845-4027 - www.rivierabch.com
*"This message may contain confidential and/or proprietary information and is intended for the person/entity to which it was originally addressed. Any use by others is strictly prohibited."*



EXHIBIT
2

Contractor Screen printed 4/26/2019 3:25:55 PM

Contractor ID: MARTIN FENCE CO Rec#: 5

Group: FENCE Type: COUNTY Hold:

Contact: MARTIN FENCE CO
Address: 862 13TH ST
City: LAKE PARK State: FL
Zip: 33403-2306 Phone: 561-848-2688

Company: GREENE ROBERT

| | Registration Number | Expires | Validate |
|---|---|---|---|
| State: | RX-0053868 | 09-30-18 | |
| Local: | U-10591 | 09-30-19 | Y |
| Bond: | C4952812 | 06-01-19 | Y |

Notes: NEED TO CLOSE OUT PERMIT 1401457 PR 12-24-14
2058242903 EX 12/01/07

Screen printed 4/26/2019 3:26:10 PM

Permit#: 19-01026 Type: FW Status: I Project: 19 MA Rec#: 104655

Address: 4601 OCEAN DR NORTH
4601 OCEAN DR NORTH

Class:
Hold:

Applied: 04-09-19
Issued: 04-23-19
Complete: - -

Master Permit:

Cost: $10,800.00
Due: $317.73
Paid: $317.73

Descript of work: INSTALL 514' OF NEW BLACK 4' CHAINLINK FENCE

Iss. By: CP
Condition 1:

Contractor: MARTIN FENCE CO
Engineer:
Designer:
Applicant: MARTIN FENCE CO

Occ Type:
Cons Type:
Sq Ft:

Permit For:

Report Code: BP # of Units: Plan Review Required (Y/N): Y

Notes: AP BY RG 4/23/19 TO FA

VOID 4/24/2019

Jeff Gagnon

(561) 845-4060

# MEMORANDUM

**To:** **City Building Division and Applicant (Martin Fence & Halo Dev.)**

**From:** **Jeff Gagnon, AICP, Acting Director of Development Services**

**Date:** **May 15, 2019**

**Subject:** **Building Permit Application No. 19-01026**
**4601 N. Ocean Drive, Chain-link Fence**

---

Additional questions have been provided below as follow up to my April 26, 2019 email (enclosed) regarding the subject City Building Permit Application (No. 19-01026). Please review and respond accordingly.

1. The Boundary Survey by SFL Land Surveyors Corp., (enclosed) provides a field date of 05-17-2018 and consists of three sheets.
    a. The certification date provided on sheet 1 of 3 is "4/17/2018". Please justify or amend this inconsistency with the field date.
    b. The Location Map on sheet 1 of 3, indicates the subject property location and two associated sheets, however, both sheets are identified as "Sheet 2", versus Sheet 2 and Sheet 3 as provided. Please amend.
    c. Within the Surveyor's Report provided on sheet 1 of 3, item No.2 states that, "This certification is only for the lands as described. It is not a certification of title, zoning, easements, or freedom of encumbrances. Abstract not reviewed." The lands as described within the legal description provided on the Boundary Survey only pertain to submerged land. Please provide proof of ownership of the land area to be impacted by the proposed fence installation.
    d. This proposal appears to impact existing structures on Lot 23 (dock) and Lot 24 (seawall). Within the Surveyor's Report, item No. 9 states that, "The surveyor does not determine fence and/or wall ownership." Please provide proof of ownership of existing structures which may be impacted by the proposed fence installation.
    e. The survey identifies a general "Mangrove Area" on sheet 2 of 3. Based on this information and from City staff field observations, plant species found primarily within wetland areas (including mangroves) appear to exist along a substantial portion of the shoreline area and "edge of water" on Parcel 6. An environmental survey and assessment would be required to be submitted to the City in accordance with City Code Section 23-83(c), and corresponding Sections within Chapter 23, Article III, to determine specific wetlands preservation area boundaries associated with this Parcel.

Thank you.

C: Deirdre Jacobs, Interim City Manager
Dawn Wynn, City Attorney

EXHIBIT
3

Reply all | Delete Junk | ...

# 19-01026

DeWitt Dulany <ddulany@capfla.com>
Wed 6/19, 5:28 AM
Gagnon, Jeff; Gagnon, Jeff <Jgagnon@Rivierabch.com>; Jacobs, Deirdre; Richards,

Reply all

Inbox

Flag for follow up. Start by Wednesday, June 19, 2019. Due by Wednesday, June 19, 2019.

You forwarded this message on 6/19/2019 9:38 AM

Good Afternoon,

After careful review of Permit Number 19-01026 located at 4601 N Ocean Drive, It is within my authority to return this issued permit to review status.

The conclusion is this permit was issued prematurely without the approval from Zoning Department.

Please provide comments and/or corrections , if any, after Zoning has completed their review.

There is also a question raised, allowing structures in Designated Wetland areas, which could include existing docks and decks located landward of wetland areas.

Judson D Dulany CBO CFM
Building Official
O 561-508-0615
C 561-261-9757
www.capfla.com | ddulany@capfla.com
1910 North Florida Mango
West Palm Beach,FL 33409

EXHIBIT
4

Judson D Dulany CBO CFM
Building Official
CAP Government,Inc.

**PLANNING & ZONING DIVISION**
Development Services Department
600 West Blue Heron Blvd.,
Riviera Beach, FL 33404
Phone: (561) 845-4060

Date: November 8, 2019

To: Robert L. Greene

Martin Fence Co. U-10591

862 13th St. Lake Park FL, 363403-2306

**Re: Expired Permit # 19-01026 Chain link fence**

Project Address: 4601 N. Ocean Drive.

Applicant,

As per Florida Building Code 2107 - **105.4.1.3**

*"Work shall be considered to be in active progress when the permit has received an approved inspection within 180 days. This provision shall not be applicable in case of civil commotion or strike or when the building work is halted due directly to judicial injunction, order or similar process."*

The above referenced project has not had a qualified inspection during the 180 days since the permit was issued on 04/15/19. Under (**FBC 2017 104.4.1.1**) your permit has expired as of 10/20/19, you are being granted a 90 extension (**FBC 2017 105.3.2**).

"An *application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.*"

This extension is granted until 1/18/20 in order to satisfy zoning comments that were issued-please see attached comments dated 5/15/19.

Thank You,
Dulany
Building Official
City of Riviera Beach

| | | |
|---|---|---|
| Cc: | Guy Durrani | Building Official CBO |
| | Jeff Gagnon AICP | Acting Director of Development Services |
| | Jonathan E. Evans | City Manager |
| | Deirdre Jacobs | Assistant City Manager |
| | Dawn Wynn | City Attorney |

EXHIBIT
5

C:\Users\ddulany\Desktop\Fence 19-1029r1.docx

# MEMORANDUM

**To:** **City Building Division and Applicant (Martin Fence & Halo Dev.)**

**From:** **Jeff Gagnon, AICP, Acting Director of Development Services**

**Date:** **May 15, 2019**

**Subject:** **Building Permit Application No. 19-01026**
**4601 N. Ocean Drive, Chain-link Fence**

---

Additional questions have been provided below as follow up to my April 26, 2019 email (enclosed) regarding the subject City Building Permit Application (No. 19-01026). Please review and respond accordingly.

1. The Boundary Survey by SFL Land Surveyors Corp., (enclosed) provides a field date of 05-17-2018 and consists of three sheets.
    a. The certification date provided on sheet 1 of 3 is "4/17/2018". Please justify or amend this inconsistency with the field date.
    b. The Location Map on sheet 1 of 3, indicates the subject property location and two associated sheets, however, both sheets are identified as "Sheet 2", versus Sheet 2 and Sheet 3 as provided. Please amend.
    c. Within the Surveyor's Report provided on sheet 1 of 3, item No.2 states that, "This certification is only for the lands as described. It is not a certification of title, zoning, easements, or freedom of encumbrances. Abstract not reviewed." The lands as described within the legal description provided on the Boundary Survey only pertain to submerged land. Please provide proof of ownership of the land area to be impacted by the proposed fence installation.
    d. This proposal appears to impact existing structures on Lot 23 (dock) and Lot 24 (seawall). Within the Surveyor's Report, item No. 9 states that, "The surveyor does not determine fence and/or wall ownership." Please provide proof of ownership of existing structures which may be impacted by the proposed fence installation.
    e. The survey identifies a general "Mangrove Area" on sheet 2 of 3. Based on this information and from City staff field observations, plant species found primarily within wetland areas (including mangroves) appear to exist along a substantial portion of the shoreline area and "edge of water" on Parcel 6. An environmental survey and assessment would be required to be submitted to the City in accordance with City Code Section 23-83(c), and corresponding Sections within Chapter 23, Article III, to determine specific wetlands preservation area boundaries associated with this Parcel.

Thank you.

C: Deirdre Jacobs, Interim City Manager
Dawn Wynn, City Attorney

## Fw: Response to Information Request Regarding Fence on Halo Property

Gagnon, Jeff <JGagnon@rivierabeach.org>
Mon 12/30/2019 4:31 PM

**To:** Durrani Guy <dguy@capfla.com>; DeWitt Dulany <ddulany@capfla.com>
**Cc:** Andrew Baumann <abaumann@llw-law.com>; Robert Diffenderfer <rdiffenderfer@llw-law.com>; Telsula Morgan <tmorgan@llw-law.com>; Wynn, Dawn S. <DWynn@rivierabeach.org>; Busby, Lina <LBusby@rivierabeach.org>; Evans, Jonathan <jevans@rivierabeach.org>; Jacobs, Deirdre <DJacobs@rivierabeach.org>; Richards, Bovell <BRichards@rivierabeach.org>; Joyce, Grace <GJoyce@rivierabeach.org>

1 attachments (8 MB)
Response to Information Request Regarding Fence on Halo Property;

Good afternoon all,

I am forwarding information received today by Mr. Richards associated with the Halo property fence for your records (email from Mr. Barsh with 4 attachments). Upon initial observation, there has been no attempt to satisfy the requirements of City Code Sec. 23-83(c), pertaining to the designation and delineation of wetlands preservation area. This comment remains outstanding. Thank you.

**Jeffrey W. Gagnon, MCDP, MPA, AICP**
Acting Director of Development Services
Development Services Department
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404
Office: (561)845-4060 [x4060]
jgagnon@rivierabeach.org
www.rivierabeach.org

---

**From:** Richards, Bovell <BRichards@rivierabeach.org>
**Sent:** Monday, December 30, 2019 2:56 PM
**To:** Gagnon, Jeff <JGagnon@rivierabeach.org>
**Cc:** Joyce, Grace <GJoyce@rivierabeach.org>
**Subject:** FW: Response to Information Request Regarding Fence on Halo Property

Please see email that was sent to me today.

Bovell Richards CBO, EC, PX, CM, BN
Assistant Building Official
City of Riviera Beach
Development Services
561-845-4006

EXHIBIT
tabbies
6

CITY OF RIVIERA BEACH
DEVELOPMENT SERVICES DEPARTMENT | 600 WEST BLUE HERON BLVD.
RIVIERA BEACH FL, 33404 | MAIN: (561) 845-4060 | FAX: (561) 845-4038
BUILDING SERVICES DIVISION

March 5, 2020

**Robert L. Greene**
**Martin Fence Company**
**862 13th Street**
**Lake Park, Fl 33403-2306**

**SUBJECT PROPERTY:**
**4601 Ocean Drive N**
**Riviera Beach, FL 33404**

**Re: Abandonment of City Building Permit Application #19-01026**
**Scope of Work: "Install 514' of four (4) ft high chain-link fence"**

Dear Mr. Greene:

The City deems the subject building permit application applied for on April 9, 2019 (19-01026), abandoned, pursuant to FBC "105.3.2 *Time limitation of application*" "an unaddressed permit application review comments."

As detailed in the FBC Section 105.3.2, an application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued. The building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

A City Building Permit was issued on April 23, 2019. However, said permit was issued without the required City Planning and Zoning Division approval, and was therefore placed back into review status. A memorandum dated May 15, 2019 to the applicant, and copied to the owner, detailed the submittal deficiencies. The following items that have yet to be resolved through the submission of a formal correction to the permit application, include but is not limited to:

1. provide proof of ownership of the land area to be impacted by the proposed fence location;
2. provide proof of ownership of existing structures which may be impacted by the proposed fence installation;
3. submit an environmental survey and assessment to the City in accordance with City Code Section 23-83(c), and corresponding Sections within Chapter 23, Article III to determine specific wetlands preservation area boundaries associated with this Parcel.

In order to address the outstanding comments, in my capacity as Building Official, I granted an extension of expiration for the application until January 18, 2020.



EXHIBIT
7

Due to the lack of a timely response to previous requests and the inability to satisfy the outstanding comments has resulted in the abandonment of this City Building Permit Application #19-01026.

Due to the applicant's failure to respond to outstanding requests for required information, and in the absence of addressing the Planning and Zoning comments for the subject permit (Building Permit Application - #19-01026) the application is deemed abandoned. Thereby, any site improvements made to date which are associated with the respective matter, such as installation of 514' of four (4) foot high chain-link fence, and unpermitted fill, must be removed from the property and the affected areas must be returned to their original pre-construction state by no later than April 5, 2020. In the event that such relative improvements are not removed by April 5, 2020, the City will pursue legal remedies to cure this situation.

Should you have any questions, please feel free to contact me via the information listed below.

Sincerely,

Durrani Guy, C.B.O
Building Official,
CITY OF RIVIERA BEACH
Development Services Department
Building Services Division
dguy@rivierabeach.org
(561) 845-4020

C: Halo Development, LLC (Property Owner)
13901 NW 118th Ave
Miami, FL 33178-3141

Jonathan Evans, City Manager
Deirdre Jacobs, Assistant City Manager
Dawn Wynn, City Attorney
Jeff Gagnon, Acting Director of Development Services
Grace M. Joyce, Development Services Operations Manager
Cheryl Bostic, Code Compliance Administrator
Dewitt Delany, Regional Director CAP

600 W. BLUE HERON BOULEVARD
RIVIERA BEACH, FL 33404-4328

[redacted]

CITY OF RIVIERA BEACH
JURISDICTION

## OFFICE OF BUILDING OFFICIAL

The work now in progress is in violation of the Florida Building Code Sec [redacted] 115.3

# NOTICE

This building has been inspected and

- ☐ General Construction
- ☐ Concrete, Masonry and Finish Cement Work
- ☐ Lathing
- ☐ Plastering
- ☐ Elevators
- ☐ Plumbing
- ☐ Mechanical Work
- ☐ Electric Wiring
- ☐ Gas Piping

PERMIT REVOKED 19-01026
CODE OF ORDINANCE
103.4

## IS NOT ACCEPTED

Please correct as noted below before any further work is done.

UNLAWFUL — NOTE — CONTINUANCE

Date _____ Inspector _____

**DO NOT REMOVE THIS NOTICE**

Location 4601 OCEAN DR. N

Date 4/21/20 Time 11:15 AM

CITY OF RIVIERA BEACH
Address: 600 W. Blue Heron Boulevard
Phone: 561-845-4021

tabbles
EXHIBIT
8

**CODE COMPLIANCE**
**NOTICE OF VIOLATION**

| | |
|---|---|
| **PROPERTY OWNER/ RESPONDENT:** | **HALO DEVELOPMENT LLC** |
| **FILE NO:** | **20-00931** |
| **PROPERTY ADDRESS:** | **4601 N. OCEAN DRIVE, RIVIERA BEACH, FL** |
| **LEGAL DESCRIPTION:** | **22/23-42-43, N 200 FT OF S 2144.8 FT OF GOV LT 1 LYG W OF & ADJ TO N OCEAN DR R/W 7 SUBMRG LANDS LYG W OF & ADJ TO IN THTF DEED DB205P82** |

**PARCEL CONTROL NUMBER: 56-43-42-22-00-001-0050**

10/22/2020

DEAR PROPERTY OWNER/RESPONDENT:.

An inspection of your above referenced property was conducted and violation(s) of the City of Riviera Beach Code of Ordinances, listed below within this notice, were discovered at/on the property. Pursuant to Chapter 2, Article VI, of the City of Riviera Beach Code of Ordinances, we request that you correct the violation(s) **within thirty (30) days** of the date of this Notice, and contact the undersigned Code Compliance Officer, to verify compliance. If you do not understand what is required or need additional time to correct the violation(s), please contact the Code Compliance Officer directly via email provided below.

**If you FAIL to correct the violation(s) by the time set forth above (or as may be extended by the Code Compliance Officer), a public hearing will be set before the Code Compliance Special Magistrate and notice of the hearing date, time and location will be provided to you.** If the violation(s) is corrected and then re-occurs, the case may still be presented to the Special Magistrate. If the violation(s) is corrected prior to the hearing but not before the time set forth above, the case may still be presented to the Special Magistrate. If you fail to attend the hearing, the Special Magistrate may base the findings solely upon the testimony of the Code Compliance Officer. If you cannot attend the hearing and wish to have someone else appear on your behalf, you must complete a notarized designation of agent form for your agent to be provided at the hearing.

You have the right to obtain an attorney, at your own expense, to represent you in this matter and before the Special Magistrate at the hearing. If you retain an attorney, the attorney must provide a notice of appearance to the Code Compliance Officer. All testimony at the hearing will be under oath and recorded. The Special Magistrate shall take testimony from the Code Compliance Officer and you, the Respondent. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. You will have the opportunity to present witnesses as well as question witnesses against you, prior to a final determination by the Magistrate. If you wish to have witnesses subpoenaed or if you have other questions, please contact the Code Compliance Officer directly via email provided below.



EXHIBIT
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You may contact Code Compliance Officer Norman Williams by email at: nwilliams@rivierabeach.org.

Norman Williams,
Code Compliance Officer
City of Riviera Beach

*CERTIFIED MAIL:*
Halo Development LLC, 13901 NW 118th Avenue, Miami, FL 33178
Halo Development LLC, c/o Registered Agent Daniel I. Halley, 13901 NW 118 Avenue, Miami, FL 33178

*E-MAIL ONLY:*
Kerri Barsh, Esq., Greenberg Traurig, P.A., 333 S.E. 2nd Avenue, Miami, FL 33131 at ***BarshK@gtlaw.com***

**VIOLATION(S):**

1. **Unpermitted fence:**

| **Code Section** | **General Description** |
|---|---|
| 22-34(a) | Construction not in compliance with codes prohibited |
| Compliance Action: | *Please remove unpermitted fence (or any remaining portion thereof).* |
| 23-84 | Prohibited activities within wetlands preservation area |
| Compliance Action: | *Please remove unpermitted fence (or any remaining portion thereof).* |
| 23-87 | Permit procedures |
| Compliance Action: | *Please remove unpermitted fence (or any remaining portion thereof).* |

2. **Prohibited signs:**

| **Code Section** | **General Description** |
|---|---|
| 28-5(13) | Prohibited signs. |
| Compliance Action: | *Please remove prohibited signs (including all portions thereof) in or on the waters of Lake Worth.* |

If this matter goes to a hearing before the Special Magistrate and you disagree with the decision of the Special Magistrate, you may appeal to the Circuit Court of Palm Beach County within 30 days after the Special Magistrate order is entered. Pursuant to section 286.0105, Florida Statutes, if a person decides to appeal any decision, by the Special Magistrate, with respect to any matter considered at subject meeting, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which includes testimony and evidence upon which the appeal is to be based. Persons who need a special accommodation in order to attend or participate in this hearing must advise the Code Compliance Officer at the e-mail address provided above at least 36 hours prior to the hearing.

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

CASE NO.: 50-2020-CA-000323-AO

DAVENDER KANT, AS TRUSTEE OF THE DAVENDER KANT LIVING REVOCABLE TRUST,

Plaintiff,

v.

HALO DEVELOPMENT, LLC, a Florida Limited Liability Company,

Defendant.

_____/

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**ORDER GRANTING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

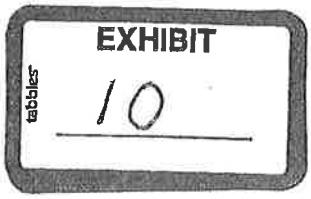
THIS CAUSE came before the Court upon Plaintiff's Verified Motion for Preliminary Injunction. Upon careful review of the file, conducting an evidentiary hearing and having heard argument of counsel, it is

ORDERED and ADJUDGED based upon the following findings and conclusions, that the motion is granted conditioned upon the determination and posting of a bond.

Thirty years ago the plaintiff constructed a dock that extended onto and over property, mostly submerged lands, now owned by the Defendant's predecessor in interest and maintained exclusive use of the dock ever since. In March of 2019, the Defendant purchased the property over which the dock had been extended and, a few months later, removed a gate at the entrance of the dock that the Plaintiff had installed to keep others off of it. Defendant then erected a fence across the dock entrance, thus barring access from the land. Plaintiff responded with this suit and moved for a preliminary injunction to have the fence removed, gate reinstalled and access restored pending this lawsuit.

Mindful preliminary injunctions are rarely appropriate or necessary, the elements have been





clearly and convincingly met in this case. The requirements of irreparable harm and the lack of an adequate remedy at law are met by the deprivation of Plaintiff's use and enjoyment of the dock. Any damages for those losses would likely be incomplete and speculative. The Court also agrees the public interests, which admittedly cuts both ways in this case, is best met by not encouraging the type of self-help engaged in by the Defendant, one that has shown no immediate advantage of its forceful actions.

The likelihood of Plaintiff's success on merits is a closer call, but still substantial. It is plain that the Plaintiff exercised actual, continuous and uninterrupted use of the dock over a certain, limited and defined area of Defendant's property for decades with full knowledge and without consent of the owner of the lands transgressed. The use was made under claim of right inconsistent with the Defendant's rights. Throughout this time, as admitted by Defendant's predecessor, they and the defendant had a cause of action against the plaintiff that it elected not to exercise.

While the elements of a prescriptive easement are plainly present, several of the Defendant's arguments warrant brief comment. Defendant claims the Plaintiff's use was consensual given discussions and correspondence between its predecessor-in-interest and the Plaintiff about the dock trespassing upon its lands. In those communications, the Plaintiff consistently indicated he had no intention to ever remove the dock and, ultimately, the prior owner decided not to litigate the issue. The record does not reflect a credible agreement or consent between the parties for use of the lands transgressed for a limited period of time. Negotiations broke down when the prior owner decided not to expend resources litigating; that is not agreement or consent.

Defendant further argues that it, not the Plaintiff, is the riparian owner and thus the Plaintiff never had any right to construct the dock. But the prescriptive easement being sought in not limited to the area of dock's extension over the submerged lands. It would extend over the entire area of Defendant's lands, upland or submerged, that the dock has trespassed upon for decades. That the Plaintiff never had a right to trespass is presupposed in every trespass and prescriptive easement case.

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The regulatory anomalies, while troublesome, are similarly of little moment. The focus of this case is upon Plaintiff's claim of rights over the Defendant's land. Said another way, the parties prospective property rights. All of the records provided indicate the dock was and remains permitted. None of the agencies identified by the Defendant are evidenced to have expressed concern. It is likely that the Plaintiff, particularly if prescriptive rights are established, would be able to maintain the dock permits and cure any alleged defects in the regulatory framework. Of course, if the agencies acted, that may effect the ultimate viability of maintaining the docks, and any prescriptive rights may cease. The Plaintiff's present right to a prescriptive easement as against the Defendant is not precluded by speculation of what the agencies might ultimately do.

Finally, Defendant argues the use was interrupted by a hurricane. While certain activities may have been interrupted, the dock and its pilings remained in place and trespassing upon Defendant's land and was repaired. This type of temporary interruption is not sufficient to break the timeline for obtaining prescriptive rights.

WHEREFORE, the Parties are directed to confer as to the (1) amount of an appropriate bond and (2) the specific terms of an injunction that will return the parties to status quo ante before the gate was removed and fencing installed.

After the parties have conferred they are directed to set a case management conference for the Court to determine how this matter should proceed.

**DONE AND ORDERED** in Palm Beach County, Florida.

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50-2020-CA-000323-XXXX-MB 08/23/2020
15TH JUDICIAL CIRCUIT
James Nutt Judge
ADMINISTRATIVE OFFICE OF THE COURT

50-2020-CA-000323-XXXX-MB 08/23/2020
James Nutt
Judge

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