



# City of Sanibel

Office of the City Attorney  
800 Dunlop Rd. Sanibel, FL 33957

August 19, 2025

Mark Ebelini, Esq.  
Knott Ebelini Hart  
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Re: Whitecaps South Condominium Association, Inc.

Dear Mark:

This correspondence responds to your July 22, 2025 letter regarding Whitecaps South Condominium Association, Inc. ("Whitecaps") and our subsequent related communications. As previously communicated, the analysis in your letter focused strictly on compliance with the federal Americans With Disabilities Act ("ADA"); however, Florida has its own accessibility requirements detailed in the Florida Building Code, which meet or exceed the ADA's accessibility requirements. Specifically, Building Official Craig Mole' rendered his determination that Whitecaps is required to adhere to vertical accessibility requirements for its new units pursuant to the 2023 Florida Building Code, Accessibility, Eighth Edition (Effective Date: Dec 31, 2023) ("FBC Accessibility Code").

Whitecaps is within the City's Resort Housing District, allows seven-day rentals, and prior to Hurricane Ian the units were routinely rented for durations of less than 30 days. It is the City's understanding that the intended use of the redeveloped units is the same as it was pre-Ian. As such, the individual units within Whitecaps are "resort condominiums," a category of "places of public accommodation," as defined by FBC Accessibility Code, required to be accessible to individuals with disabilities. Among those accessibility requirements is having "accessible means of egress" from the units as such terms are defined by the FBC Accessibility Code. For an elevated building, this includes vertical access.

Specifically, FBC Accessibility Code provides the following definition of "place of public accommodation" within Section 106.5 Defined Terms.:

**Place of Public Accommodation.** A *facility*, operated by a *private entity*, whose operations affect *commerce* and fall within at least one of the following categories:

- (1) Places of lodging. Except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the proprietor. For purposes of this part, a facility is a "place of lodging" if it is—

...

Resort condominiums are considered to be public lodging establishments pursuant to Section 509.242, F.S.<sup>1</sup>

....

Each individual unit at White Caps Condominium Association is considered a *facility*, operated by a *private entity*, whose operations affect *commerce* and falls within the category of *resort condominium*.

FBC Accessibility Code Section 106.5 provides the following definitions of the italicized terms above (and relevant ones italicized within the definitions below):

**Facility.** All or any portion of *buildings*, structures, *site* improvements, *elements*, and pedestrian routes or *vehicular* ways located on a *site*.

**Building.** Any structure used or intended for supporting or sheltering any use or occupancy.

**Site.** A parcel of land bounded by a property line or a designated portion of a public right-of-way.

**Private Entity.** A person or entity other than a *public entity*.

**Commerce.** Travel, trade, traffic, commerce, transportation, or communication:

- (1) Among the several states;
- (2) Between any foreign country or any territory or possession and any state; or
- (3) Between points in the same state but through another state or foreign country.

**Resort Condominium.** (Section 509.242, F.S.) A *resort condominium* is any unit or group of units in a condominium, cooperative, or time-share plan which is rented more than three times a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or one calendar month, whichever is less (see also, *Places of Lodging*).

**Accessible Means of Egress.** A continuous and unobstructed way of egress travel from any point in a *building* or *facility* that provides an accessible route to an area of refuge, horizontal exit, or a *public way*.

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<sup>1</sup> Section 509.242, Florida Statutes, details classifications of public lodging establishments, which includes under subsection (1)(c), "vacation rental.—A vacation rental is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project."

FBC Accessibility Code Section 101.1.2 provides that all new or altered *places of public accommodation* are subject to FBC Accessibility Code and shall comply with FBC Accessibility Code. Among the various pertinent provisions of the FBC Accessibility Code is Section 201.1.1, which requires vertical accessibility to a place of public accommodation, and Section 402.2, which details required components of accessibility routes for a place of public accommodation (and others subject to the FBC Accessibility Code):

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4 [of the FBC Accessibility Code] and 208.3.1.

Building Official Mole' determined elevator access was required to the Whitecaps units but that the Florida Building Commission, within the Department of Business and Professional Regulation ("DPBR"), could consider a waiver application for such requirement. Your July 22, 2025 letter indicated a representative of White Caps had spoken with state a consultant, who provided a verbal opinion that the Whitecaps units were not required to be ADA compliant. However, it appears from DPBR records that a formal waiver application was submitted to the DPBR in January 2025 and such waiver application was denied. Building Official Mole' having rendered his decision, the DPBR having denied Whitecaps' waiver application, and not seeing any good cause for reconsideration of the Building Official's decision, it appears nothing remains to discuss. A local jurisdiction does not have authority to waive FBC Accessibility Code standards—such waiver authority is within the exclusive purview of the Florida Building Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "John D. Agnew".

John D. Agnew

Cc: City Manager Dana Souza  
Building Official Craig Mole'

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July 22, 2025

John Agnew, Esq.  
City Attorney - City of Sanibel  
800 Dunlop Road  
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Via email to: [john.agnew@mysanibel.com](mailto:john.agnew@mysanibel.com)

Re: Whitecaps South Condominium  
2907 West Gulf Drive, Sanibel FL 33957

Dear John:

We represent Whitecaps South Condominium Association, Inc. (the “Association”) in its buildback of its nine condominium units at Whitecaps Condominium. The Association voted to proceed with single story modular housing units, being four duplexes and a single-family dwelling, replacing the former such units. The duplex units have been completed and are ready to be shipped for the Association’s contractor, Robert S. Perkins General Contractor, Inc., to install on site.

However, last Fall the City’s building official rejected the plans for these units, claiming that the units had to comply with the American With Disabilities Act (“ADA”). To ensure this was the only issue with the units, the Association had an architect submit the plans with the ADA improvements included, and received building permits from the City for the four duplexes (BLDR-2024-017219, BLDR-2024-017228, BLDR-2024-017232 and BLDR-2024-017233). However, remodeling these units to include the requirements would add over \$500,000.00 to the project.

I was asked to opine on required ADA compliance and, after review, I have concluded that the ADA does not apply to Whitecaps. Title 3 of the ADA provides “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of . . . accommodations of any *place of public accommodation* by any person who owns leases (or leases to) or operates a place of public accommodation.” 42 USC § 12182(a) (emphasis added) Included among the categories of “places of accommodation” are “places of lodging.” The U.S. Department

of Justice has issued revised ADA Title III regulations implementing the ADA. The most recent iteration is 28 CFR 36.104, last amended on July 3, 2025. This Section reads as follows:

*Place of public accommodation* means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories –

- (1) Place of lodging, except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the proprietor. For purposes of this part, a facility is a “place of lodging” if it is
  - (i) An inn, hotel, or motel; or
  - (ii) A facility that –
    - (A) Provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and
    - (B) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following –
      - (1) On- or off-site management and reservations service;
      - (2) Rooms available on a walk-up or call-in basis;
      - (3) Availability of housekeeping or linen service; and
      - (4) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.

This Code rule is available at <https://www.ecfr.gov/current/title-28/chapter-I/part-36/subpart-A/>.

Whitecaps Condominium is not an inn, hotel or motel. While the condominium is in the City’s Resort Housing District, and the unit owners may rent their units for a minimum of seven days, the units are not centrally marketed or managed, and the condominium has no amenities similar to a hotel, motel or inn. The only planned amenity in the buildback is a barbecue area to meet the City’s recreational space requirement. Each unit owner can elect to rent their unit when they are not present, and decide whether to have a marketing and/or management company of their choice handle the rental process. Rooms are not available on a walk-up basis, and there is no housekeeping or linen service other than what is placed in the unit at the time of occupancy by the owner or manager. The final; factor in the rule is “acceptance of reservations for a guest room type without



guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.” Here, the reservations are in advance for a particular unit arranged with that owner or its agent on its own terms. All stays are under a written lease agreement with, presumably, a security deposit as any vacation rental would require. Whitecaps Condominium differs greatly from resort establishments on the island, such as the timeshare units at Casa Ybel, or, the privately-owned units at Sundial Beach Resort & Spa, each being centrally managed and having full resort amenity access, including access to the resort pool and other facilities and eating venues.

My understanding of the timeline is that after Whitecaps’ permit application was denied, the City’s building official advised Whitecaps’ contractor to apply for a waiver of ADA requirements from the state. In January, Chip Sellers, a Government Operations Consultant with the Florida Building Commission, spoke with Whitecaps contractor, opining that Whitecap’ units were not required to be ADA compliant. He did not, however, issue a written decision.

However, as the City has not agreed, the project is stalled as the cost of compliance is excessive. The building official also apparently raised concerns about the access requirements of the Fair Housing Act (FHA) for multifamily buildings. However, the FHA regulations adopted by the Department of Housing and Urban Development at 24 CFR § 100.201 define “covered multifamily dwellings” as “all dwelling units in *buildings containing four or more units* with one or more elevators, and all ground floor units in *building containing four or more units*, without an elevator.” Whitecaps’ units are not four or more units.

I would appreciate the City’s basis for requiring Whitecaps’ units to comply with the ADA or FHA. Thank you for your attention to this matter.

Very truly yours,

KNOTT EBELINI HART



Mark A. Ebelini

MAE/mcl

Cc: Client