

# Knott · Ebelini · Hart

Attorneys At Law

George H. Knott\*\*  
Mark A. Ebelini  
Asher E. Knipe  
George W. Gift, III<sup>o</sup>  
Vamsi Karanam

\* Board Certified Civil Trial Lawyer  
□ Board Certified Real Estate Lawyer  
+ Board Certified Business Litigation Lawyer  
o Board Certified Construction Lawyer

1625 Hendry Street • Third Floor (33901)  
P.O. Box 2449  
Fort Myers, Florida 33902-2449

Telephone (239) 334-2722  
Facsimile (239) 334-1446

[www.knott-law.com](http://www.knott-law.com)

Thomas B. Hart<sup>□</sup>  
Of Counsel

James T. Humphrey  
Retired

Michael E. Roeder, AICP  
Director of Land Use

[mebelini@knott-law.com](mailto:mebelini@knott-law.com)

October 23, 2025

Via Federal Express and email to [citymanager@mysanibel.com](mailto:citymanager@mysanibel.com)

Dana Souza  
City Manager - City of Sanibel  
800 Dunlop Road  
Sanibel FL 33957

Re: Whitecaps South Condominium Association, Inc. Build Back  
2907 West Gulf Drive, Sanibel FL 33957  
Building Permit Nos. BLDR-2024-017219, BLDR-2024-017228, BLDR-2024-  
017232 and BLDR-2024-017233  
Change Order Denial

Dear Mr. Souza:

We represent the unit owners of Whitecaps South Condominium (“Whitecaps”). This letter constitutes the Whitecaps South Condominium Association’s appeal to the City’s Construction Board of Adjustment and Appeals (the “Board”), on behalf of the unit owners, regarding the decision and interpretation of the Florida Building Code<sup>1</sup> by the City’s Building Official, Craig Molé, relative to the Association’s permit applications listed above.

To achieve approval of its buildback permits, Mr. Molé has required each of the proposed four duplex buildings<sup>2</sup>, and each individual condominium unit in Whitecaps to comply with accessibility and mobility features, including elevators, in each building (vertical accessibility), and

---

<sup>1</sup> The Florida Building Code is adopted by reference in Section 14-2 of the Sanibel Code, being part of Chapter 14, titled the “*Sanibel Building Code*.” Section 14-53 provides for appeals of the City Building Official’s decision by the owner of a building, or a duly authorized agent, when it is alleged the intent and meaning of Chapter 14 has been misconstrued or incorrectly interpreted.

<sup>2</sup> The four permits referenced above are for the four duplex units comprising 8 of the 9 units of the condominium. The ninth building will be a free-standing single-family unit as previously existed.

accessibility requirements in the interior of each unit. The interior features alone will require extensive remodeling of the interior of the new modular units to be shipped to the site which will cost the unit owners hundreds of thousands of dollars. The features are:

**General ADA Features :**

- Installation of a vertical platform lift with a 36" ramp (3" rise) for accessible entry to the elevator threshold
- Elevator
- Concrete paving for designated handicap parking space
- 12' wide clearance for accessible vehicle parking
- Stair risers limited to a maximum of 7"
- ADA-compliant turning spaces (60" diameter, T-shaped, or 36" x 48" clear floor area)
- ¼" beveled threshold at entry doors

**Kitchen ADA Changes:**

- 6" wide x 9" high toe clearance
- 27" high knee clearance at sink base
- 30" wide roll-under work surface
- 34" high countertops
- ADA-compliant pull-down wall cabinets (24" high)
- Electrical outlets installed at 48" A.F.F. and a minimum of 36" from corners

**Bathroom ADA Changes:**

- Roll-in shower
- ADA folding shower seat
- Grab bars at shower and toilet areas
- Wall-hung or pedestal sink

- ¼" beveled threshold for shower
- ADA-compliant toilet

Plans including these features were presented to finally determine the full extent of what was required. However we disagree that these units are required to have these accessibility features as they are not “places of lodging” under the ADA.

When the contractor assisting the Association sought to amend or correct the approved plans to remove these features, he was informed by Mr. Molé via the attached memo in the building permit record that the changes would not be approved. Mr. Molé’s memo dated October 20, 2025 is attached.

Mr. Molé is requiring these accessibility features based on his position that the Florida Accessibility Code for Building Construction properly defines a “place of public accommodation” as including each of the Whitecaps units, under the category of “places of lodging.” This position has been confirmed by the City Attorney.

Mr. Molé’s interpretation is flawed because the only legal definition of a “place of public accommodation” under Florida law is in the regulations published by the Federal Justice Department in the federal Americans With Disabilities Accessibility Act (“ADA”) Standards for Accessible Design, and related regulations in 28 C.F.R. Parts 35 and 36 and 49 C.F.R. Part 37. (C.F.R, being the “Code of Federal Regulations”) These regulations were adopted as Florida law by the Florida Legislature in Section 553.503 of the Florida Americans With Disabilities Accessibility Implementation Act (the “State Accessibility Act”) (Sections 553.501 – 553.513, Florida Statutes). Section 553.503 states the CFR regulations are “adopted and incorporated by reference as the law of this state.” The Legislature further required that the CFR regulations be “incorporated into the Florida Accessibility Code for Building Construction and adopted by the Florida Building Commission in accordance with Chapter 120.”

Had Mr. Molé applied these CFR regulations to Whitecaps building permit applications, the Whitecaps units would not each be classified as a place of public accommodation, and the challenged accessibility features for a place of public accommodation would not apply. Therefore, in this appeal, we request that the Board require Mr. Molé to apply the definition of a “place of public accommodation” in CFR regulations to the Whitecaps building permit applications. If the Board declines our request, we will proceed with a Petition for a statewide panel review under Florida Statutes Section 553.775, this appeal being a prerequisite to that process.

Rather than applying the adopted CFR regulations to Whitecaps, Mr. Molé has utilized the definition of a “place of public accommodation” adopted by the Florida Building Commission in

Chapter 12 of the 2023 Florida Building Code (“FBC”), Accessibility (8<sup>th</sup> Edition, effective December 31, 2023). Chapter 12 of the FCB begins by citing Section 553.503, quoted above, stating: “The Department of Justice regulations 28 CFR, Part 35, and 28 CFR, Part 36 . . . and the requirements of Florida law, Part II, Chapter 553 F.S.[the State Accessibility Act], have been incorporated in this code.”

This statement in the FBC is inaccurate. While seeming to track the CFR definition, the definition of a “place of public accommodation” in Section 106.5 of Chapter 12 of the Florida Building Code is materially different than the definition in 28 C.F.R. 36.104, adopted by the Florida Legislature. As relevant here, applicable to the category of a “place of lodging,” 28 C.F.R. 36.104(1) states:

***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.** (emphasis added)

The Florida Building Code definition, while containing this same language, adds the following unnumbered sentence at the end of the cited definition above:

**Resort condominiums** are considered to be **public lodging establishments** pursuant to Section 509.242, F.S.

It is this unauthorized sentence that brings the Whitecaps units within the definition of a “place of public accommodation,” with the buildings and each unit treated as “transient lodging” under the FBC for purposes of ADA requirements. This has led to incorrect requirements under Chapters 201 (vertical accessibility), and Chapters 224, and 806 (applicable to “transient lodging guest rooms”) of the FBC cited in Mr. Molé’s memo. However, Whitecaps never had and does not plan to provide guest rooms under conditions and with amenities similar to a motel, hotel or inn, and will have *none of the items* listed in 28 C.F.R. 36.104(1)(ii)(B)(1-4). The reference to Section 509.242 of the Florida Statutes is remarkable because the term “resort condominiums” is no longer utilized in Section 509.242, which is a licensing statute and has nothing to do with the accessibility code. The Florida Building Code then adds a definition of a “resort condominium”(again citing non-existent Section 509.242), as:

**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.

The Florida Building Commission had no authority to adopt, and Mr Molé has no authority to apply a definition of “a place of public accommodation” that differs from the Federal ADA standards in the CFRs adopted “as the law of this state,” which the Florida Legislature directed the Florida Building Commission to “incorporate it into the Florida Accessibility Code for Building Construction.” Moreover, in Section 553.506 of the State Accessibility Act, the Florida Legislature authorized the Florida Building Commission to “by rule, adopt revised and updated versions of the Americans with Disabilities Act Standards for Accessible Design in accordance with Chapter 120.” Again, the revised and updated versions are referring only to revisions to *Federal law*, not a definition altered by the Florida Building Commission contrary to legislative direction. In Section 553.73 the Florida Legislature declared:

Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in [the State Accessibility Act].

Therefore, neither the Commission nor the City of Sanibel can alter or expand the definition of a “place of public accommodation” under 28 C.F.R. 36.104, as adopted by the State Accessibility Act. “An administrative agency has only such power as granted by the Legislature and may not expand its own jurisdiction.” *Dep’t of Revenue v. Graczyk*, 206 So. 3d 157, 160 (Fla. 1st DCA 2016); and *Subirats v. Fidelity Nat. Property*, 106 So. 3d 997, 1000 (Fla. 3d DCA 2013) (Where a statute does not contain a specific grant of legislative authority for a certain rule, any such rule is an invalid exercise of delegated legislative authority.).

Mr. Molé’s interpretation also leads to an absurd result. Under Florida law, motels and hotels are required to have only 5% of their guest rooms, minus a number of accessible rooms, equipped with the accessibility features being applied by the Molé to *all* of Whitecaps’ units. Thus, if Whitecaps was a true place of public accommodation, i.e., a hotel or motel, it would need only one unit to have the challenged accessibility features, rather than all nine units. The Whitecaps unit owners do not wish to be licensed as a motel or hotel, (some unit owners do not even rent) and do not have the facilities, management or features to be a motel or hotel. Whitecaps unit owners have the option, on their own, to rent their units for a minimum period of seven days. The new Whitecaps units are designed to meet all Florida accessibility requirements that apply to new residential units under the State Accessibility Act, but the units should not be classified as a place of public accommodation contrary to the Florida Legislature’s clear directive.

Finally, the Building Department has required installation of fire sprinklers in the units, simply on the basis that the Whitecaps units are in the City’s resort housing district. However, Section 509.215 of the Florida Statutes provides:

509.215 Firesafety.—(1) Any:

- (a) Public lodging establishment, as defined in this chapter, which is of **three stories or more** and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress, or
- (b) **Building over 75 feet in height** that has direct access from the guest area to exterior means of egress and for which the construction contract has been let after September 30, 1983, shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 “Standards for the Installation of Sprinkler Systems.”

Dana Souza, City Manager

October 23, 2025

Page 7

Thus, even if the Whitecaps proposed buildings could be considered as public lodging establishments under Section 509 (not to be confused with a “place of public accommodation” under the ADA), the Whitecaps buildings will not be three stories or 75 feet in height. Therefore we request the requirement of fire sprinklers be eliminated.

Under LDC Section 14-51, the City Council acts as the City’s Construction Board of Adjustments and Appeals. We look forward to addressing this matter before the City Council and to the Council providing the relief requested. Enclosed is a check in the sum of \$480.00 representing the appeal filing fee. Thank you for your consideration.

Very truly yours,

KNOTT EBELINI HART



Mark A. Ebelini

MAE/mcl

Enclosure

cc: Client

John Agnew, City Attorney via email to [john.agnew@mysanibel.com](mailto:john.agnew@mysanibel.com)

**❗ Plumbing • Requires Re-submit • Mole Craig • Completed : 10/20/2025**

Due Date	Completed Date
10/27/2025	10/20/2025

**Correction (1)**

Correction Type	General	Category	General Correction
Corrective Action	N/A		
Comment	<p>These buildings have been determined as primarily transient in nature and therefore subject to the applicable provisions of the 8th Ed. FBC-Building (FBCB) as R1 occupancies. The 8th Ed. FBC-Accessibility (FBC-A) is applicable to this building or a portion thereof; other buildings; or all buildings at this facility. Accessible features and vertical accessibility must be provided for this building, and other buildings at this facility. Provide accessibility details per FBCB 107.3.5 and the applicable provisions of FBC-A. Permitting and inspection of elevators are in accordance with 399 F.S. Required Sprinklers and life safety devices shall be reviewed by the Fire Marshal. Required accessible communication and mobility features and the quantities and locations must be provided per FBCB 107.2 and FBC-A 224, 206 and 806.</p> <p>1. "Transient public lodging establishment" R-1 Occupancy means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 consecutive days or which is advertised or held out to the public as a place regularly rented to guests for periods of less than 30 consecutive days</p> <p>Any waivers for providing Accessibility Code provisions for vertical accessibility and accessible features must be provide by the Florida Building Commission per FS 553.512 not the Local Authority having Jurisdiction.</p>		

**❗ Electrical • Requires Re-submit • Mole Craig • Completed : 10/20/2025**

**❗ Building • Requires Re-submit • Mole Craig • Completed : 10/20/2025**

**Public Works • In Review • Dolley Olsin • Due : 10/27/2025**