

**MINUTES  
FORT MYERS BEACH  
Code Enforcement**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

**Wednesday, June 5, 2013**

**Hearing Examiner - Magistrate:** Mr. Joe Madden

**Code Enforcement Officer for Fort Myers Beach:** Mr. Robert Mercado

Mr. Madden swore in those providing testimony.

**CASES TO BE HEARD:**

<b>1) DEFENDANT:</b>	Four Diamond Investment Corp.: (80 AVE E)
<b>SUBJECT:</b>	IPMC Section: Chapter 3 General Requirements Exterior
<b>SITE ADDRESS:</b>	80 Ave E
<b>STRAP NO.:</b>	24-46-24-W4-40070.0020
<b>CODE OFFICER:</b>	Robert Mercado
<b>REFERENCE NO.:</b>	CE13-0555

Code Enforcement Officer Robert Mercado reviewed the violations and the history of the case.

Captain Ronald L. Martin, Fire Marshall, testified that he was called to consult in 2011 with the unsafe building team with Lee County at the request of Ken Miller with the Town of Fort Myers Beach. Captain Martin stated that statutorily, any building with more than two units is placed under the Fire Protection Control Act in the state of Florida. He stated that one of the questions that has come up in the past two years is that a lot of these codes were not in place when the building was constructed. Captain Martin read subsection 1.3.2.4.3 of NFPA 1, Chapter 1, which states, "In cases where the authority having jurisdiction determines an imminent danger, the AHJ shall be permitted to apply any portion of the current code retroactively."

Captain Martin testified that Building 1 is an abandoned structure and there have been three incidents of squatters during the past two years. Captain Martin stated that this building creates a hazard, not only to the responsible parties, but to additional structures.

Special Magistrate Madden asked if Building 1 was a triplex.

Ken Miller, Building Safety Services Coordinator for The Town of Fort Myers Beach, stated that Building 1 is zoned for 2 units, Building 2, 2 occupants and Building 3, 1 occupant.

Captain Martin testified that due to close proximity to another structure, Building 1 was an imminent danger.

Mr. Miller testified that there was a deck that provided a covered walkway, which was the only means of egress for tenants in Buildings 2 and 3. Mr. Miller stated that the covered walkway was in danger of collapse. On June 24, 2011, the owner was contacted and plans were submitted with an application to remove the walkway. Plan review comments required further information, which was never submitted, so the permit expired due to lack of activity.

Town Attorney Miller asked if the FEMA 50% rule was an issue in this case. Mr. Miller stated that it was not an issue because this was considered a life safety issue and is exempt.

Mr. Miller clarified that the initial plan was to remove the portion of the structure that would allow safe egress, not to repair or to replace it.

Town Attorney Miller questioned why it took so long to get to this point. Town Attorney Miller and Mr. Mercado came to the conclusion that the town did not adopt the current property maintenance code until February 2013, and the owners were cited under various provisions of the current code.

Clark Richards spoke as a friend of Hal Burke, one of the owners of Four Diamond Investment Corp. Mr. Richards testified that the buildings were constructed in 1939, before there were building codes. Mr. Richards stated that according to a survey, Building 1 is a legal, non-conforming 5-unit building, Building 2 is a legal, non-conforming 4-unit building, and Building 3 is a conforming single-family dwelling unit. He stated that there have been 10 units in this property. Mr. Burke stated that a previous owner will testify that the property was licensed by the State of Florida as a 10-unit complex. Mr. Richards read a statute regarding non-transient apartments and licensing of said property.

Special Magistrate Madden reminded Mr. Richards that the issue today was maintenance, not how many units were in the building. Mr. Richards stated that he understood, but it was important to the case. Mr. Richards discussed the history of zoning and building codes in Lee County. Mr. Richards did not dispute the maintenance issues, and stated that some work had been done. Mr. Richards disputed the Town's jurisdiction and asked for clarification on whether the property was considered a 2-unit or a 5-unit property. Mr. Richards contended that if it was a 2-unit property, the Fire Marshall did not have jurisdiction.

Town Attorney Miller stated that Captain Martin was only there to testify to the danger that the structure presents and the maintenance code violations. Town Attorney Miller

stated that two years ago the fire department ordered the tenants out of the building and it was never appealed. She stated that the building has been abandoned since then.

Mr. Richards testified that today's abandonment issue was caused by the Town. He questioned whether the Fire Marshall had the authority to order the tenants out of the building two years ago because it was considered a 2-unit property. Mr. Richards stated that as a result of that action, a plan by Alpha Engineering was submitted to the town sometime after 11-17-2011. Mr. Richards testified that he did not receive any information from the town regarding that application. Mr. Richards testified that another owner submitted a survey on 12-06-2011, and that owner never heard back from the Town.

Special Magistrate Madden asked what the Alpha Engineering plan proposed. Mr. Richards showed Special Magistrate Madden the plan. Mr. Richards attended a meeting with the Town in May of this year to determine what needed to be done to the property. The plan indicated that the covered walkway needed to be reinforced, not removed. Mr. Richards asked for clarification on what needed to be done. Mr. Richards stated that the notice that was left on the building was not valid because it did not cite certain issues.

Special Magistrate Madden stated that the allegations today are due to the violations of the current maintenance code. He stated that he will not provide an opinion regarding the number of units. He also stated that the fact that the building was abandoned had no bearing on the maintenance code. Special Magistrate Madden reminded Mr. Richards that the maintenance code had been violated. He stated that the Town does have a partial application to bring the property into compliance. Special Magistrate Madden advised Mr. Richards that he was prepared to find that the violations were there and to give him an appropriate time to abate them. Mr. Richards was unclear regarding the violations.

Mr. Burke stated that Mr. Bob Wing had performed some maintenance issues. Special Magistrate Madden questioned when the repairs were done and if those repairs were performed within the time frame on the violation. He determined that the repairs were not done within the time frame.

Mr. Burke stated that they looked at demolishing the building if it had a 5-unit density, but he was told that the property was a 2-unit density, so he stopped going further.

Special Magistrate noted that there was a process that Mr. Richards and Mr. Burke could initiate if they had questions regarding those issues, but it was not code enforcement.

Town Attorney Miller stated that property owner was told about the specific process in 2011. Mr. Burke testified that he never heard about that meeting. Zoning Coordinator Leslie Dulmer testified that she met with consultants for the property owner on numerous occasions and they discussed the violations. Ms. Dolmer also testified that the legal number of units on the property was also discussed and she informed them of

the administrative interpretation process. Ms. Dolmer stated that the Town had not received paperwork regarding that process.

Town Attorney Miller reminded Mr. Richards and Mr. Burke that the issue at hand was the property maintenance issues. She stated that since permits were not pulled for the work that was already done by Mr. Wing, Mr. Burke may be in further violation. She asked Mr. Miller to describe to Mr. Burke and Mr. Richards what repairs needed to be done.

Mr. Miller stated that the list of violations covered what needed to be done and specifically stated what the repairs were. Mr. Miller informed Mr. Richards and Mr. Burke which type of repairs required permits.

Special Magistrate Madden asked Mr. Richards if he had questions regarding the list. Mr. Richards stated that he did not know what needed to be permitted. Mr. Miller went informed Mr. Richards and Mr. Burke which items required permits. Special Magistrate Madden asked Mr. Burke and Mr. Richards if they refuted the list of violations. They stated they did not.

Special Magistrate Madden found that there was a violation of the sited code section and the violations in Buildings 2 and 3 would be incorporated into the order. He found that the items were not remedied in the time given under the order so this was a first-time violation and if it happens again, it would be a second violation.

Special Magistrate Madden stated that they will have 60 days to abate the problems. He also stated that if they needed more time, they can apply for more time. Enforcement costs of \$100 daily fine if not abated.

Mr. Richards asked for 90 days due to the permitting process. Special Magistrate Madden clarified the violation for Building 1 and Captain Miller stated that 90 days was too long for the covered walkway due to the egress issue. Mr. Richards discussed the definition of egress and how it applied to the violation. Captain Martin discussed the three specific documents and how they defined egress.

Special Magistrate Madden stated that he would allow 45 days to abate the covered walkway violation and 90 days to come into compliance with the balance of issues. The Town will work in conjunction with the Defendant. Enforcement costs of \$100 daily fine if not abated.

<b>2) DEFENDANT:</b>	Nautical Marketing LLC (Sea Gypsy)
<b>SUBJECT:</b>	Section: 34-678 Outdoor display and sales of merchandise (e) PRIVATE PROPERTY Subsection (e)(1)(a) Subsection (2)(5)
<b>SITE ADDRESS:</b>	1698 Estero Blvd
<b>STRAP NO.:</b>	24-46-24-W4-0070B.001A

CODE OFFICER: Robert Mercado  
REFERENCE NO.: CE13-0056

Mr. Mercado reviewed the violations and the history of the case.

Zoning Coordinator Leslie Dolmer testified that although the process to permit at this location was convoluted, a permit was issued. She testified that the violation of this property was that the displays had spilled off the deck onto other parts of the property. Ms. Dolmer explained the options available to the property owners and stated that the owner decided on using the clothing rack and eight displays. She stated that the Town was currently in the process of reevaluating and potentially revising the outdoor display section of the code due to confusion. Ms. Dolmer stated that there had been excessive displays at this location. Photos indicated that the clothing was not on the patio, but on the stairs.

Jackie Liszak stated that she is the property owner of Nautical Marketing, which owns Sea Gypsy. She stated that if anyone complained about her property, she would like the names and dates of those complainants. Town Attorney Miller advised her that she may request that information as a public records request.

Ms. Liszak stated that she received one violation notice dated 04-16-13. She did not receive the notice dated 3-27-13. Ms. Liszak requested a copy of that notice as well as a copy of Mr. Mercado's list with dates. Ms. Liszak stated that she received a violation in January, but she was a new business and the Town should have educated her as to what compliance was.

Special Magistrate Madden stated that the issue today is the 04-16-13 violation and the violation in January was not relevant to the case. Ms. Liszak disagreed.

Ms. Liszak stated that she had a temporary use permit while navigating the permit process. She also submitted drawings to the Town as per exhibits. Ms. Liszak testified that she only had three days to respond to the violation as opposed to five days. Ms. Liszak questioned the porch requirement that required a roof, awning, or umbrella. She said the property has never had a roof, awning, or umbrella, and she requested clarification. She does not believe that citation should be in the notification.

Zoning Coordinator Dolmer stated that that section of the violation was included to show that the outdoor display was not limited to the porch. She stated that it did not include covering. Ms. Liszak stated that in her opinion this code is inconsistent and difficult to understand. She questioned portions of the violation and requested clarification. Ms. Dolmer stated that the violation was because display items were not limited to the porch.

Special Magistrate Madden clarified the notice of violation process for Ms. Liszak. She discussed the photos with Special Magistrate Madden. Ms. Liszak explained why the notice and photos were confusing on several points. Ms. Liszak stated that the code was discriminatory to the downtown district. She stated that businesses south of

Diamond Head did not have to follow the code, particularly a large grocery chain. Zoning Coordinator Dolmer testified that the code did apply to them.

Ms. Lyszak did not dispute the violation and stated that she did discuss the situation with her manager. Ms. Lyszak stated that she was appalled that the code enforcement officer was counting displays instead of policing the community. Mr. Mercado testified that if the display items consistently stayed on the porch, they would not be in violation.

Special Magistrate Madden found that the violation existed in terms of display of merchandise off the porch not consistent with the permit. He also ruled that the violation did not get remedied in the time given, but it was abated now. If another violation is issued, it would be considered a repeat violation. Special Magistrate Miller <sup>MADDEN</sup> waived the enforcement costs.

<b>3) DEFENDANT:</b>	Bencin Enterprises Inc., 1010-3 Booths Robin Thurston
<b>SUBJECT:</b>	LDC Sections: 34-678(b)(2) Outdoor display and sales of merchandise and food. 34-678(d) Types of outdoor displays. 34-678(e) PRIVATE PROEPERTY: number, location, and types of outdoor displays and dining tables. 34-678(e)(5) Permit required.
<b>SITE ADDRESS:</b>	1010 Estero Blvd.
<b>STRAP NO.:</b>	24-46-23-W3-0001.80000
<b>CODE OFFICER:</b>	Robert Mercado
<b>REFERENCE NO.:</b>	CE13-0073

Mr. Mercado began to review the violation at Times Square Booths. Robin Thurston testified that she was representing 1010 Estero kiosks in the alleyway. She stated that there was some confusion regarding the certified letters because they came to Times Square Bazaar and she is not Times Square Bazaar. She stated that she did not receive the letters because they were not addressed to her. Ms. Thurston requested additional time due to the fact that the property owner recently lost his wife and is currently in California.

Special Magistrate Miller asked the Town if they agreed to extra time. Zoning Coordinator Dulmer stated that the Town would like to move forward with the case. Special Magistrate Miller would like further information and he ordered the case to be added to the July agenda.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

6/10/13

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