

**MINUTES
FORT MYERS BEACH
Code Enforcement**

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

Wednesday, July 3, 2013

Hearing Examiner - Special Magistrate: Mr. Joe Madden

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

Mr. Madden swore in those providing testimony.

CASE TO BE HEARD:

Continuance: Property Owner: Bencin Enterprises Inc. (Kiosks) Re: Robin Thurston

SUBJECT:	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 PROPERTY: number, location, and types of outdoor displays and dining tables. 34-678(e)(5) Permit required.
SITE ADDRESS:	1010 Estero Blvd.
STRAP NO.:	24-46-23-W3-0001.80000
CODE OFFICER:	Robert Mercado
REFERENCE NO.:	CE13-0073

Code Enforcement Officer Mercado reviewed violations and history of the case. Mr. Mercado indicated the location of the kiosks on the map and he stated that the three kiosks were stand-alone businesses, which were not allowed, nor were the wall displays attached to the building allowed. Special Magistrate Madden asked Mr. Mercado what had to change in order to be in compliance. Mr. Mercado stated that only one kiosk is allowed per owner and the kiosk must sell the same product inside that was being displayed outside.

Ms. Robin Thurston submitted a report to Special Magistrate Madden. Ms. Thurston stated that she was not the owner of the property and she did not receive notices sent by the Town to the Town Square address.

Ms. Thurston reviewed the history of the case from 2006. She stated that she worked closely with Code Enforcement Office Steve Lane. Ms. Thurston presented evidence of prior filing documentations. She stated that she had no violations and she was told that she was in compliance. Ms. Thurston indicated that the wheels needed to be re-attached to the kiosk, but they would do that and they would put the kiosk on pavers. Ms. Thurston did not have a permit

for the electrical work and could not locate the original electrician. Mr. Mercado stated that there was not a permit on file for electric to the kiosk and a stop work permit was issued in March of 2013. Ms. Thurston stated that the Fire Marshall never questioned the electrical hook-up for the kiosk.

Based on Ms. Thurston's documentation, Mr. Madden questioned the Town as to why the case was being heard. Ms. Dulmer discussed the history of documentations and stated that the latest certificate of use was issued in error. Ms. Dulmer stated that research indicated that code prohibited that kiosks operate as independent businesses. Mr. Madden asked if the code provision was similar in 2006-2007 and if a mistake had been made with the approval. Town Attorney Miller stated that she thought that might be the case. Ms. Dulmer stated that she did not find signed documentation indicating approval. Town Attorney Miller indicated that Ms. Thurston would be permitted to have one outdoor display of items she would vend in an indoor fixed business location. Mr. Madden confirmed with Ms. Dulmer that the kiosk was a mobile vendor set up on a semi-permanent basis as opposed to a display.

Ms. Thurston questioned why money was taken if she was not in compliance. Mr. Madden summarized both sides of the case. Since 2007, Ms. Thurston operated all three carts as a landlord for multiple occupants that she independently sub-leased to three different owners. The Town continued to issue certificates of use. In 2013, the electrical issue was discovered and research indicated that permits had not been issued in the past.

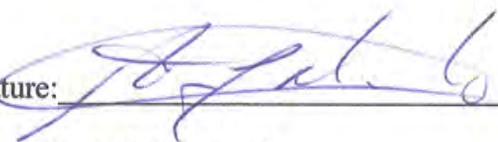
Mr. Madden stated that Ms. Thurston testified that the kiosks could be dismantled before a tropical weather event. Mr. Madden questioned Mr. Mercado regarding the health, welfare, and safety aspect of the kiosks. Mr. Mercado stated that they were dangerous because they were not easy to dismantle. Ms. Thurston stated that they were built before they were transported to the site, which made them easy to move. They had a backhoe available at a moment's notice and they would be moved to and anchored at their residence prior to a weather event.

Ms. Thurston explained that she was never categorized as an outdoor display, but as a free-standing business in a movable kiosk. Mr. Madden asked Town Attorney Miller if mobile vendors were prohibited. Town Attorney Miller cited a 2003 ordinance that prohibited mobile vending.

Special Magistrate Madden found that the ongoing use of three stand-alone kiosks had never been a permitted use under the Town code in terms of the outdoor display provisions cited. The violation had existed since 2007, despite applications and approvals that were given in error. Special Magistrate Madden stated that there was not a written original approval. Ms. Dulmer stated that there were four kiosks instead of three.

Special Magistrate Madden gave Ms. Thurston 90 days to come into compliance with the Town of Fort Myers Beach Code. The compliance will be to either remove the four kiosks, table, and wall display, or to properly permit them through Fort Myers Beach Code. Mr. Madden encouraged Ms. Thurston to request an extension if a resolution is close to 90 days. If no extension is given or compliance cannot be met, Ms. Thurston will be fined \$200.00 per day for every day that the kiosks and displays remain and enforcement costs of \$150.00 per day will

apply. Mr. Madden explained enforcement costs and the appeal process to Ms. Thurston. Ms. Thurston requested clarification of options available and the permit process. Mr. Madden clarified.

Signature:  _____

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