



Fort Myers Beach Special Magistrate Hearing

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Thursday, September 5, 2024

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Special Magistrate Monica Schmucker called the hearing to order.

II. APPROVAL OF MINUTES

- A. Special Magistrate Hearings - August 6, 2024
Special Magistrate Schmucker approved the minutes.

III. SWEARING IN OF THOSE PROVIDING TESTIMONY

Special Magistrate Schmucker swore in those providing testimony.
Code Officer D. Batt could not attend, so Manager Yozzo presented the cases.

IV. CONTINUED CASES

- A. 144 Gulf Island Dr., Andrews, David + Mardina

Case Number: 20220371

Violation: Work without Permit - Stairs

**Code Section: LDC Sec. 6-111 - Adoption; amendments
105.1 - Permits required**

Code Officer: D. Batt

Manager Yozzo reported that the violator came into compliance with the issuance of a permit to replace rotted wooden stairs. The town requested a finding of violation and an administrative fee of \$250.00. Special Magistrate Schmucker found a violation existed and she imposed an administrative fee of \$250.00.

- B. 1661 Estero Blvd., Key Estero Shops, LLC

Case Number: 20240249

Violation: Operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Code Section: LDC Sec. 34-3203 - Illegal buildings, uses and lots.**Code Officer: D. Batt**

Special Magistrate Schmucker indicated the case was continued from the previous hearing.

Attorney Amy Thibaut from Roetzel & Andress represented the respondent and requested permission to allow a member of the public to testify. She received permission.

Tim Shadle stated that the parking lot was used as a paid parking lot for years before the current owner purchased it, although he was not sure if it was a legal lot.

Attorney Thibaut reviewed the history of the property. She stated the owner purchased the property based on the shared parking use. She believed the parking lot was grandfathered, but the respondent submitted a special exception application to settle the dispute. She requested that any fines be put in abeyance to allow the property owner to go through the special exception process. She cited a FL case regarding adjudication and stated that the owner acted in good faith when he purchased the property.

Town Attorney Stuparich stated that the town's position did not change, and the property remained an illegal, nonconforming use. She indicated the affidavits on the record were not relevant to the violation. No information from the county stated that the parking lot was a lawful use. She revealed that Key Estero was issued a notice of violation in 2019 for the illegal use of a commercial parking lot. The owner presented the same argument that his use was authorized under the county ordinances that were in effect at that time at the time that the Town incorporated and adopted its Code of Ordinances. She reviewed why it was an illegal, nonconforming use. She stated that no special exception was filed when she filed her previous reply, but she verified that the respondent filed the application and ~~had made~~ had made payment. She requested that an affidavit from Officer Batt be entered into the record.

Manager Yozzo presented the affidavit with photos and reviewed its contents. He testified that the information was accurate. The town requested a finding of a repeat violation, fines of \$85,500.00 for 171 days at \$500.00 per day and an administrative fee of \$250.00. Town Attorney Stuparich requested ~~that a sign prohibiting paid parking be installed until a special exception is issued.~~ that something more be done to stop the Respondent from continuing to operate the parking lot and asked for any appropriate relief. She noted that he continued to operate an illegal parking lot. Special Magistrate Schmucker will enter the information into the record.

Attorney Thibaut cited a case regarding the failure to file notice within 30 days and continued discussing the history of the shared parking lot.

Special Magistrate Schmucker asked why the respondent continued to operate after paying the fine. Attorney Thibaut was unsure but believed it was a lawful, nonconforming use.

Special Magistrate Schmucker explained that this case was a repeat of the previous finding, which was adjudicated; to allow Respondent to continue to operate after it was found to be illegal and allow Respondent to re-litigate the issue after a failure to appeal would be concerning. Attorney Thibaut did not think this case would set a precedent because it was unique.

Town Attorney Stuparich stated there was nothing in the record from the county to adjudicate that supports Attorney Thibaut's argument. She noted that the respondent never appealed the town council's previous decision, and that Respondent has not submitted sufficient evidence in support of her position. Special Magistrate Schmucker agreed it was a unique situation and would issue an order within 15 days.

C. 5740 Lauder St., McCarthy, Wendy L. + Unknown Heirs of McCarthy, Janet

Case Number: 20240316

Violation: Failure to maintain a property in safe condition or demolition

**Code Section: LDC Sec. 6-111 - Adoption; amendments
103.5 Unsafe buildings or systems**

Code Officer: D. Batt

Case closed. Matter transferred to Building Official's for further consideration under the Unsafe Building Code.

Manager Yozzo requested that the case be closed and transferred to the building official for further consideration. Town Attorney Stuparich added that the building would be demolished.

Attorney Amy Thibaut from Roetzel & Andress represented the property owner and indicated that the building should be demolished in four to six weeks.

The town requested an order to close the case. Special Magistrate Schmucker ordered the case be closed.

Minutes approved with ~~/without~~ changes, October 3, 2024, by Special Magistrate Schmucker.

Signature: _____

