



Fort Myers Beach Special Magistrate Hearing

**Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Wednesday, January 29, 2025**

1:00 PM

Minutes

ORDER OF BUSINESS

I. CALL TO ORDER

Present: Special Magistrate Monica Schmucker, Town Clerk Amy Baker and Operations & Compliance Manager Thomas Yozzo.

II. APPROVAL OF MINUTES

No action.

III. SWEARING IN OF WITNESSES

Special Magistrate Schmucker swore in those providing testimony.

IV. PUBLIC HEARINGS

A. FORECLOSURE AUTHORIZATION AND CORRECTION - 80 AVENUE E REQUEST TO CORRECT A CLERICAL ERROR AND AUTHORIZATION TO FORECLOSE A RECORDED CODE ENFORCEMENT ORDER IMPOSING LIEN (INSTRUMENT NO. 2019000067137) ENCUMBERING 80 AVENUE E, FORT MYERS, FLORIDA

An attorney for the town reviewed the narrative as stated on the red sheet in the agenda materials. She cited a clerical error and noted that the lien recorded on March 27, 2019, instrument number 2019-00067137, was the one she was asking to foreclose on today. The incorrect foreclosure of the order was recorded on April 6, 2016, instead of the lien recorded on April 27, 2019. She requested a new order authorizing foreclosure. She noted that White Sands Properties of Fort Myers Beach was the property's current owner. Notice of the hearing was provided to the respondent and a copy of it with attachments was included with the agenda materials. She distributed copies of the amended hearing Exhibit B. The amount owed under the code enforcement lien was \$594,650.00.

Manager Yozzo presented the affidavit of notice and posting, which is included in Exhibits B, C, D and E. He testified that the property was in compliance as of September 28, 2022, due to Hurricane Ian.

The lien was recorded in Lee County Public Records more than three months

ago and the town has met its burden to foreclose on the lien. The lien remains unpaid and the respondent has not presented evidence that the lien was ever released. Copies of a prior order were distributed and all the Exhibits were entered into the record.

The attorney for the defendant stated that the notice of hearing was not an authorization to foreclosure. It said it was a notice of hearing to correct a clerical error in a foreclosure authorization related to a lien encumbering 80 Avenue E. Exhibit I was the order the town asked the Special Magistrate to correct. The problem was that Exhibit I was a final order, and jurisdictionally, final orders could only be corrected within the time for rehearing. According to the town's code, a request for rehearing must be in writing and made within 10 days of the date of the order. The order was entered on February 23, 2024, so the request should be denied. He explained why he thought it was a substantive error instead of a clerical error. He provided copies of the defendant's Exhibit 1 and described the contents. Only one of the three liens listed on the first page of the amended and corrected notice of code enforcement was correct, which was 2019-000160404.

The town's attorney objected to bringing in other code enforcement cases. Special Magistrate Schmucker allowed the defendant's attorney to continue. He stated the town sought relief to foreclose on the April 12, 2016, lien ending in 76125. He referred to Exhibit B2 and noted that was the lien the town requested to foreclose, and the Special Magistrate did exactly what they asked by authorizing foreclosure on the April 12, 2016 lien. He stated that it was not a typo and that if the Special Magistrate changed and corrected the order, she would give the town new substantive relief by authorizing foreclosure on a new lien.

The town's attorney stated they were seeking a new order authorizing foreclosure on the document in Exhibit A. She read the notice of hearing and clarified that the clerical error was that the order they sought to foreclose now was not included in the agenda materials or notice of the previous hearing.

Special Magistrate Schmucker indicated she would have the defendant's attorney proceed with the substance and she would not rule today.

The defendant's attorney described the prior hearing when Mr. Orlandini presented the Special Magistrate with a settlement check and stated she would not be considering whether or not there was a settlement. If she was inclined to maintain that same position, he asked that she make it abundantly clear to the town. Special Magistrate Schmucker told him to present his case and she would decide what to consider.

Jesse Schmidt, property owner, testified that he purchased the property from Mr. Orlandini in March 2020. He explained that the lien on 80 Avenue E encumbered all his properties, including 1560 I St. When White Sands purchased 1560 I St., he was unaware of the other liens until the title search. The former town manager, Roger Hernstadt, made a deal with him to remove the code enforcement fines from 80 Ave. E. and the town council accepted Mr. Schmidt's offer of \$65,000.00 and cashed the check. Mr. Schmidt paid \$50,000.00 and Mr. Orlandini paid \$15,000.00. Mr. Schmidt purchased

another property from Mr. Orlandini, which used to be MoJo's restaurant at 1710 and 1740 Estero Blvd.

The defendant's attorney presented a copy of a check dated December 12, 2019, to resolve the liens at 80 Ave. E and give a partial release of Mr. Orlandini's fine so he could sell 1560 I St., which did not have a lien.

The defendant's attorney presented a document regarding the partial release of 1560 I St. dated January 10, 2020. A second document was a partial release of a lien for 1710 and 1740 Estero Blvd. dated November 12, 2020, recorded months after Mr. Schmidt closed on the property after the \$15,000.00 was paid. Mr. Schmidt thought the total amount paid was around \$130,000. The code enforcement case was CE17-0065. The defendant's attorney referred to a lien recorded on March 2, 2021, for 2890 Seaview St., case number CE14-0394. Mr. Schmidt understood that the documents presented resolved the liens based on 80 Ave. E. Mr. Schmidt identified a zoning verification letter dated November 18, 2020, from the town stating there were no active code enforcement cases on the property. He identified another email he sent to the town council to release a lien on 80 Ave. E. Town Council member Karen Woodson responded that she would follow up and they were working hard to clean up the past. Mr. Schmidt commented that he bought other properties on the beach with paid liens that had not been released and the town was trying to clean them up. Mayor Dan Allers wrote an email and thought the issue was resolved years ago. Mr. Schmidt stated it had been resolved years ago.

The town's attorney clarified that Mr. Schmidt did not personally write a check to release the liens on 80 Ave. E. Mr. Schmidt said he went to the town council to get 1560 I St. released. The town's attorney presented minutes from a code enforcement case stating it was a partial release for the property listed herein, 1560 I St. Mr. Schmidt noted that Mr. Orlandini had to pay the \$15,000.00 to get the others released. The town's attorney asked whether there was a written agreement. Mr. Schmidt said there was, but Mr. Hernstadt refused to give him a copy because he was not the owner.

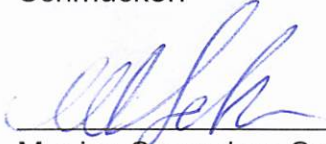
The defendant's attorney provided an email from Council Member Woodson, attaching the November 18, 2020, email where she circled in red that there were no active code enforcement cases on the property at 80 Ave. E and was sent on May 10, 2024. He reviewed the above information to make his case that the town forgot to file the release for 80 Ave. E.

Manager Yozzo repeated his earlier testimony regarding compliance. Special Magistrate Schmucker received confirmation of the settlement at the town council meeting on December 9, 2019. The defendant's attorney provided a copy of the minutes. Special Magistrate Schmucker entered all the exhibits into the record and stated she would issue an order regarding the threshold issue within the next 15 days. If she finds a jurisdictional issue with the notice, that would end the order and would not be continued. If she determines that the notice was proper, it will be continued to March 5, 2025. The defendant's attorney will submit a brief by February 4, 2025, and the town will respond by February 7, 2025.

V. ADJOURNMENT

Special Magistrate Schmucker adjourned the meeting at 10:16 AM.

Minutes approved as presented on June 6, 2025, by Special Magistrate Schmucker.



Monica Schmucker, Special Magistrate