Fort Myers Beach Special Magistrate Hearing

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931

Minutes | **Wednesday, February 4, 2026** | **9:00 AM**

ORDER OF BUSINESS

I. CALL TO ORDER

Present: Town Clerk Administrative Coordinator Lizzette Roman, Town Attorney Nancy Stuparich, Assistant Town Attorney Chloe Berryman and Special Magistrate Monica Schmucker.

II. APPROVAL OF MINUTES

No minutes approved.

III. CERTIFICATION OF LIEN(S) (NON-COMPLIANCE)

No liens.

IV. LIEN FORECLOSURE CASES

A. White Sand Properties of Fort Myers Beach, LLC

AUTHORIZATION TO FORECLOSE A LIEN (INSTRUMENT NO. 2019000067137) ENCUMBERING REAL PROPERTY LOCATED AT 80 AVENUE E, FORT MYERS BEACH, FLORIDA
FMB Case No.: CE14-0394
Property Owner: White Sand Properties of Fort Myers Beach, LLC
Property Address: 80 Avenue E., Fort Myers Beach, Florida 33931

Assistant Town Attorney Chloe Berryman introduced the case and noted that the lien amount totaled $594,650 and requested authorization to foreclose.

She explained that the violation began in 2014 when the respondent's predecessor in title failed to bring the property to compliance and a daily fine of $250 accrued and a lien for the fine was recorded against the subject property. In 2019, Mr. Orlandini, became the new property owner, as well as the respondent's predecessor in interest. Because the violation continued on the property, the Special Magistrate entered a code enforcement order certifying that $257,150 had accrued and the fines continued to accrue daily $250 for each day out of compliance. On March 27, 2019, a lien was recorded on the subject property as the Instrument No. ending in 7137.

Assistant Town Attorney Berryman noted that under Florida Statute Section 162.09(3), the Town Attorney may obtain the authorization to foreclose after three months from the filing of any lien that remains unpaid. An order imposing a lien was originally entered on March 30, 2016, during the ownership of one of the respondent's predecessors and interest and the order imposed a fine of $250 per day beginning on March 25, 2016. The order was recorded April 12, 2016, as Instrument No. 2016000076125 and a subsequent order certifying the lien was entered on March 22, 2019, as the owner of the property had not complied with the previous order and no fines were paid. The order vacated the previous order imposing lien and certified that a $257,150 fine had accrued and continued to accrue $250 per day. The order was recorded March 27, 2019, as the Instrument No. ending in 7137. The property remained out of compliance and an affidavit of compliance was issued in this case finding that the property has coming into compliance on September 28, 2022 due to Hurricane Ian and the subject property being demolished. She read the affidavit of compliance that was attested by the code enforcement manager, Thomas Yazzo, at the time for the Town. The days from January 17, 2019 to September 28, 2022, amounted to 1,350 days at $250 per day totaling $337,500. The lien was recorded more than three months ago according to the clerk stamp on the face of the lien and it remains unpaid confirming that a total of $594,650 is due under the lien. The affidavit signed and attested by Thomas Yazzio states that the state fines accrued between March 25, 2016 and September 20, 2022 for the violation in the amount $250 per day for 2,278 days, equaling a total of $594,500 plus $150 in administrative feeds for a total amount of $594,650 due under the lien. She continued to state that the code enforcement case will be closed upon full payment. The last couple of years, the respondent has attempted to contest the fact that the lien remains unpaid by claiming the existence of some sort of agreement with the Town. The Town's position is that no agreement exists. She reiterated that the reason for this hearing was to request authorization to foreclose the lien that's recorded as Instrument No. 201900067137 and code enforcement case 14-0394 since it has been more than three months since the lien date of March 27, 2019. The lien remained unpaid as evidenced by the affidavit of compliance and the affidavit of the code enforcement manager.

Respondent's counsel, Alex Brockmeyer, recapped on the events prior to the meeting. He explained that the Town initially sought foreclosure on Instrument No. 201600076125 as the first order imposing lien. At a prior hearing, February 12, 2024, the Town requested authorization to foreclose on the lien and the request was granted and issued an order authorizing foreclosure. Counsel continued by stating that, during the February 2024 hearing, the Town did not introduce any evidence related to the lien that is the subject of the current proceeding, Instrument No. 2019000067137. He emphasized that the record and order from February 2024 was about the 2016 instrument, which was vacated. He noted that the order stated there

had been no introduction of the 2019. Counsel argued that, in the present matter, the Town had already elected its remedy by seeking to foreclose on the 2016 lien, despite that lien later being vacated. He contended that under binding precedent, the Town is now bound by that election, even if the remedy chosen was ultimately invalid. He noted that the Town cannot now pursue foreclosure on the 2019 lien after having already obtained an order authorizing foreclosure on the earlier, vacated instrument. According to counsel, the decision to proceed on the 2016 lien constituted a final and irrevocable election of remedy. The Town's foreclosure request on the 2019 lien should therefore be denied. Counsel further emphasized that the foreclosure authorization order issued by the Special Magistrate in February 2024 is a final order, and the Town is now bound by it. He introduced a affidavit from Mr. Schmidt into evidence. He noted that the contents of the affidavit were consistent with Mr. Schimdt's testimony given at a prior hearing. He stated that the affidavit supported the respondent's position that the lien had been resolved through an agreement involving Mr. Orlandini, Mr. Schmidt and the then Town Manager, Roger Hernstadt. Mr. Brockmeyer stated that a partial release has been issued in code enforcement case 14-0394, which reflected payment made toward the outstanding liens.
Counsel argued that this payment must be accounted for in any foreclosure calculation. He stated that if the lien total were reduced by the $50,000 already paid and released, the adjusted lien balance would be $544,650. He further referenced a letter from Carl Bengay, which was included in both the respondent's affidavit and the Town's exhibits. The letter, dated November 18, 2020, stated that there were no active code enforcement cases against White Sand Properties in relation to the property at 80 Avenue E. Counsel argued that this letter was significant because, regardless of whether the Special Magistrate agreed with the respondent's claim of a settlement agreement, the letter showed that the property was in compliance as of that date. He suggested that this effectively stopped the accrual of daily fines as of November 18, 2020. He then offered a calculation based on the Town's accrual rate of $250 per day, running from March 25, 2016, through November 18, 2020, which he calculated to be 1,699 days. At the stated daily rate, this would amount to $424,750 in fines. Counsel concluded by stating that, once the $50,000 partial payment was applied, the total adjusted lien would amount to $374,750.

Assistant Town Attorney Berryman responded to the respondent's legal argument, stating that the respondent's argument fails for several reasons, the simple being that the prior foreclosure order concerned a completely different instrument that the one being currently presented. She noted that the case previously cited, North Bay, deals with a different factual scenario. It doesn't deal with lien foreclosure or quasi-judicial code enforcement proceedings. The Town is requesting authorization to foreclose this particular instrument and the lien presented today was not at the 2024 hearing. She stated that the lien the Town is seeking to foreclose reflects a distinct legal basis in foreclosure separate from the vacated 2016 lien and is not barred from prior authorization. It was not in the notice for the 2024 hearing and it wasn't included or introduced to that hearing. She explains that under Florida law, res judicata, does not prevent a new foreclosure action when they arise from different operative facts. Florida supreme court held that the doctrine of race judicata does not necessarily bar successive foreclosure suits. The cases she mentioned were Bartam v. U.S. Bank, a Florida Supreme Court case for the proposition that if subsequent foreclosure actions were barred, the mortgager would have no incentive to make future timely payments and clearly justice would not be served. She presented cases Espar Venture LLC v. Garcia, Hayes v. Reverse Mortgage Solutions, Inc. and Thompson v. Department of Environmental Regulation for the proposition that principles of res judicata do not always neatly fit within the scope of administrative proceedings and that res judicata is applied with great caution in administrative cases. She argues that the current foreclosure is based on a new operative lien from 2019, not from 2016 and applying res judicata to block the case would wrongly prioritize a clerical error over the real purpose of Chapter 162. The 2019 lien represented a new cause of action because it's based on a subsequent order certifying accrued fines and replacing the earlier lien. The Town asks that the foreclosure request is not barred and for the Special Magistrate to hear the Town's request to foreclose this instrument on its merits.

Assistant Town Attorney Berryman addressed the claims by the respondent regarding a December 9, 2029, Town Council Meeting, where he went to Town Council to request to pay to settle a number of liens on the property. However, the official Town Meeting minutes contradict that version and show that Jesse Schidmt was buying a house with lien issues and pledged to pay $50,000 toward the liens. In the meeting, Joe Orlandini, seller, mentioned the property and the broader umbrella lien situation. The Town Manager said the agreement could be crafted specifically for that property, and the council agreed to proceed with that limited action- not a broad lien settlement. She reads that on paragraph five of the respondent's affidavit, White Sand and Mr. Orlandini approached the Town of Fort Myers Beach to resolve code enforcement cases CE-0167, CE-0394, and CE-17-0065, which involved multiple properties tied to violations at 80 Avenue E. The affidavit claims they offered $65,000 in exchange for releasing the liens on those properties, and that the town authorized its manager to settle the liens. She clarified that the property that Mr. Schmidt sought to release from under the umbrella of liens and the subject property were both owned by Orlandini at the times of the liens. Mr. Orlandini sought to release a separate piece of property to sell. Pursuant to the agreement, Mr. Schmidt delivered a $50,000 check to the Town to release 1560 I St. from the liens recorded against 80 Avenue E. Mr. Orlandini was trying to sell a separate piece of property. The check was for an amount of $50,000, the memo stated for a partial release for 1560 I St. and the amount they committed towards the liens on 80 Avenue E not in

satisfaction of those liens. In accordance to the decision by Town Council on December 19, 2019 was to release only the 1560 I St. property and that all other properties attached to Instrument No. 2019000067137 remain. On February 3, 2020, Joe Orlandini asked to mitigate liens on 80 Avenue E and other properties. Town Council approved a motion to waive the rules regarding lean mitigation and allow the Town Manager to work out these issues with Mr. Orlandini. This shows that as of February 3, 2020 there was no agreement in place to settle the liens. She read the emails of communication with the Town Manager and Mr. Schmidt that explains that there were two code cases that are not in compliance and as of April 1, 2020, the liens were still on the property, fines were still accruing and Mr. Schmidt was aware of that. She summarized paragraphs 16 through 18 of the respondent's Affidavit, which states that on March 31, 2020, Beachfront Escapes LLC issued a check to the Town in the amount of $111,628.04. The affidavit claims this payment covered both the remaining $15,000 owed by Orlandini under a purported agreement and fines related to another matter.
The subject property for the release was for 1710 to 1740 Estero Boulevard and the mutual release of claims does not have anything to do with 80 Avenue E. Exhibit 33A from November 2020 was discussed, explaining that a realtor, Ms. Kiker, emailed Town staff for a meeting regarding Jesse Scmidt's permits and fines at 80 Avenue. This still showed discussions regarding the property were still ongoing at the time. She presented Daphne Bercher's response to Ms. Kiker's email that stated in accordance to the compliant agreement sent to Mr. Schimdt on May 1, 2020, a one-time fine of $61,628.04 was due immediately in order to release the lien. Ms. Kiker had acknowledged the email and that she was going to work with Mr. Schimdt to get everything back on track. The email communication as of November 2020 shows Mr. Schmidt knowledge that permits were needed to bring the property into compliance before the lien could be removed. A zoning verification letter was obtained that would determine what could be built back and if he chose to correct the violations by demolishing the property. A lien search request form was requested on behalf of White Sands Properties of Fort Myers Beach.
Assistant Town Attorney Berryman presented Exhibit 39A, a copy of the email of a lien list and their status as of December 9, 2021 that was requested by a council member. Exhibit 39B is a copy of the attachment to the email that showed the amount due including the accruing $250 per day. Exhibit 40 was the set of minutes from the January 13, 2021 Management and Planning meeting where Town Manager Hernstadt reported the cases and the lien violations were discussed. Exhibit 41A was the set of minutes from January 24, 2022, where the former Town Attorney provided a list of 14 code enforcement liens and the options to foreclose or injunction. Exhibit 41B was the list presented to Town Council during that meeting. Exhibit 43A are the minutes from April 22, 2022 where Town Council unanimously approved a motion to authorize the town attorney to enforce the code enforcement violations and liens through court actions including foreclosure. Exhibit 43B

was the agenda item summary and the 43C was the memo that was referred to in the minutes. The email exchange that is Exhibit 44A was read and that as of May 16, 2022, the Town's position was that there still was no agreement. Exhibit 52 was a couple of affidavits that offered to show that no agreement exists. Exhibit 53 is an affidavit that is being offered to show that the email and attachments presented are public records of the Town. Exhibit 56 is the Town of Fort Myers Beach driveway application. Assistant Town Attorney Berryman reiterated that the hearing today was to request authorization to foreclose the lien recorded in the code enforcement case number 14-0394 and the statutory prerequisites have been met on the code enforcement lien recorded as Instrument No. ending in 7137.

Special Magistrate Schmucker stated that her job today was to review what the elements are and if they have been met. She noted this was not a homesteaded property. The notice, service, violations on the property, fines were assessed and a lien was recorded have all been met. She questioned about the partial release for the $50,000 that was on the 1560 I St. property, but the lien ending in 1737 encumbers all the properties of that owner. She asked that if any part of the $50,000 could be applied to the lien.

Assistant Town Attorney Berryman stated that the lien ending in 7137 had five properties at the time and did not include Mr. Orlandini's businesses.

Respondent's counsel, Alex Brockmeyer, stated that 1560 I St. did not have any code enforcement liens and it was only encumbered by the virtue of the liens on 80 Avenue E.

Assistant Town Attorney Berryman stated that there were three releases recorded and two releases were from the same code enforcement cases and were filed.

Special Magistrate Schmucker expressed her disagreement with the respondent's argument that res judicata would apply because the Town sought to foreclose on a completely different instrument and therefore it does not bar the Town from seeking foreclosure.

Assistant Town Attorney Berryman stated her agreement with Mr. Schmidt paying the $50,000 toward the liens on the property and in the foreclosure suit that the $50,000 be credited to the total lien amount owed.

Special Magistrate Schmucker made clear that the lien amount on Instrument No. 7137 was $257,150 plus $250 per day thereafter until September 28, 2022 and the vacated lien was Instrument No. 6125.

Recessed at 11:15 a.m. - Resumed at 11:25 a.m.

Assistant Town Attorney Berryman stated that she did not know what the respondent's exhibits of partial releases were from but she was certain they had nothing to do with the Town Council meeting that occurred in December 2019.

Respondent's counsel, Alex Brockmeyer stated that there was $15,000 that was part of the payment of all the liens that would release the properties from being encumbered from the liens on 80 Avenue E and it did not include the code enforcement liens that may have existed on those properties. The $15,000 would apply to the same properties as the payment of $50,000.

Assistant Town Attorney Berryman noted that the release agreement provided concerning the Mojo's property, was in agreement between the Town and a business entity.

Special Magistrate Schmucker stated that she will review all the information and she would accept any proposed order by either party no later than a week from today.

V. ADJOURNMENT

Special Magistrate Schmucker adjourned the meeting at 11:38 AM.

Minutes approved with / without changes, April 16, 2026, by Special Magistrate Schmucker.

Signature: ________________________