

**MINUTES
FORT MYERS BEACH
Code Enforcement**

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

Wednesday, April 3, 2013

Hearing Examiner-Magistrate: Mr. Joe Madden

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

Mr. Madden swore in those providing testimony.

CASES TO BE HEARD:

1) DEFENDANT:	WINDS
SUBJECT:	LDC Sections: 30-153 (b) (1) Commercial Uses in Zoning districts (signage)
LOCATION:	150 San Carlos Blvd,
STRAP NO.:	24-46-23-W3-0020-70000
CODE OFFICER:	ROBERT MERCADO
REFERENCE NO.:	CE12-0023

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

Michael Cicerone reviewed why he thought the Town felt the signs were non-compliant. Mr. Mercado and Mr. Fluegel responded to Mr. Cicerone's questions. Mr. Cicerone introduced a picture from the building in 2012 where it showed the signs on the awnings. Mr. Cicerone questioned who requested the complaint be filed. Mr. Mercado noted the Code Enforcement Department and Department of Community Development were advised to review all the businesses that had displays outside. Mr. Cicerone reviewed "backlit awnings" and stated that was what the building had. Mr. Mercado concurred.

Town Attorney Miller questioned Walter Fluegel, Director of Community Development on how he was involved in the case. Mr. Fluegel noted his department had held discussions regarding backlit awnings and if there was any "grandfathering." Mr. Fluegel stated that all signs had to conform to the Town's definition. Town Attorney Miller questioned if he felt the signs were larger than the 8 square feet allowed. Mr. Fluegel answered in the affirmative.

Mr. Cicerone questioned where the awnings began and ended. Mr. Mercado indicated where he thought the awnings began and ended.

Town Attorney Miller questioned if Town staff had reviewed some interpretations that might not have been clear in the LDC. Mr. Fluegel stated they had.

Mr. Cicerone questioned Tim Anglim (spelling) regarding his relationship to the business. Mr. Anglim noted he owned the business and that the awning was one continuous awning. He

mentioned that he would have to take down all of the awnings to remove the sign. Town Attorney Miller questioned if Mr. Anglim had considered applying for a variance. Mr. Anglim stated he was not aware of the process. Ms. Miller questioned if it could cover or paint over the signage. Mr. Anglim stated he was not sure.

Mr. Cicerone stated he had written up a report on all of the reasons he disagreed with the Town's interpretation. He stated there needed to be ruling on the statutory interpretation. He stated case law noted general language in an ordinance could not override specific language. He stated the language the Town was relying on was "general." He stated his client clearly had backlit awnings. He reviewed 30-5 (5) which mentioned that the "and" provided his client to continue his awning and replace signage. He stated law only applies to wording after the word "and." He stated they felt they were in compliance under the "grandfathering." He noted when the awnings needed to be replaced they would be done other the current code.

Town Attorney Miller noted the Town had encouraged Mr. Cicerone and Mr. Friedman to apply for a variance. She stated they understood the economic issue, but felt a variance would support their request. Ms. Miller stated the Town Council was being firm about all signs being in compliance. Mr. Cicerone stated he felt they were in compliance and should not have to apply for a variance.

Special Magistrate Madden stated he would allow the Town to create a booklet like Mr. Cicerone's. He stated it should be completed within a week and provided to Mr. Cicerone and himself. He questioned if when the "glitch" ordinance was done, was there a conversation that a backlit awning with an imbedded sign was different from an awning sign. Mr. Madden questioned what types of signs were on the business.

Town Attorney Miller stated its signage because there was lettering. She stated they would consider it exempt from the 32 sq.ft. max if it were less than 8 sq. feet. She stated they were trying to work with the business. She stated any signing on the awning had to comply with the signage ordinance. Mr. Fluegel stated the 32 sq. ft. maximum was consistent, he stated the property would need a variance and that an ordinance would not have been created based on one business.

Special Magistrate Madden advised the Town they had one week to provide a memorandum similar to Mr. Cicerone's. He asked that it did not go beyond the scope of Mr. Cicerone's. After the conclusion, he would issue and order and provide to all. The order has the ability for rehearing; as well as they could appeal to circuit courts.

2) DEFENDANT:	Krohn Investments LLC
SUBJECT:	30-156 (b) Maximum Sign Area 34-678 (c) Outdoor Display on Private Property
SITE ADDRESS:	1028 Fifth St
STRAP NO:	24-46-23-W3-30002-80080
CODE OFFICER:	Robert Mercado
REFERENCE NO:	CE13-0059

Town Attorney Miller noted there was a problem with the service and the case was withdrawn.

3) DEFENDANT:	Old San Carlos Inn Development (Sun on the Beach)
SUBJECT:	34-678 (d) Types of outdoor displays

SITE ADDRESS: 34-678 (e) Outdoor display on private property
STRAP NO: 34-678 (e) (5) permit required
CODE OFFICER: 450 Old San Carlos Blvd, Unit G108
REFERENCE NO: 24-46-23-W3-04200-0G108
Robert Mercado
CE13-0076

Mr. Mercado reviewed the violations. He stated on October 31, 2012 he and Inspector Toro handed out Display Permit Applications to the business. He stated on February 6, 2013, many of the businesses had still not applied for the Display permits. On March 15, a Notice of Hearing was sent to the businesses who still had not applied for the display permit. Mr. Mercado showed pictures of the displays.

Zoning Coordinator Leslie Chapman stated the building had numerous businesses. Therefore, each business was only entitled to one outdoor display.

Doug Spearingsmith(spelling), noted he was the property owner and was not aware of the issues until he was served. He stated he would apply for the businesses that had not done so.

Mr. Madden stated there was a finding of fact that a violation existed. If in the future another business was sited, it would be considered a repeat violator and the fines would increase. He stated he would allow 30 days to abate the problem. Enforcement costs of \$100 and \$150 daily fine if not abated.

4) DEFENDANT: Old San Carlos Inn Development (Krusty Pete's)
SUBJECT: 34-678 (e) (5) permit required
SITE ADDRESS: 450 Old San Carlos Blvd, Unit G108
STRAP NO: 24-46-23-W3-04200-0G108
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0076

Mr. Mercado began reviewing the case. Special Magistrate Madden questioned if the case should be consolidated with the previous case. Consensus was to consolidate the two cases.

David Anderson, representative for Krusty Pete's stated he had applied for a permit.

Special Magistrate noted the two cases would be consolidated, but the order for the other case would remain as stated.

5) DEFENDANT: James Bidro, Jay's General Store
SUBJECT: 34-678 (e) Outdoor display on private property
34-678 (e) (5) permit required
SITE ADDRESS: 1741 Estero Blvd
STRAP NO: 19-46-23-W4-0080-B0010
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0070

Mr. Mercado reviewed the violations. He stated the business applied, but they did not pay the application fee. He stated on March 24th the defendant paid the fee. Zoning Coordinator Chapman stated a permit had not been issued.

Mr. Madden noted a finding of fact that a violation existed. Enforcement costs of \$285 and \$150 daily if not abated within 30 days.

6) DEFENDANT: RFN Corp, H2O
SUBJECT: 34-678 (e) (5) permit required
SITE ADDRESS: 1018 Fifth St
STRAP NO: 24-46-23-W3-30020-80010
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0066

Mr. Mercado reviewed the violations. He stated as of March 16, 2013 the company had still not complied. He reviewed the pictures of the violation.

Nori Cohen stated he did advise staff that he would no longer hang the merchandise on the door. He stated he had an issue with being limited on how many mannequins he could have.

Mr. Madden stated there was a finding of fact that a violation existed. There would be \$285 enforcement costs and \$100 daily fine if not abated within 30 days.

7) DEFENDANT: Juan C. Gil, On the Sand
SUBJECT: 34-678 (e) (5) permits required
34-678 (e) – Outdoor display on Private Property
SITE ADDRESS: 1270 Estero Blvd
STRAP NO: 19-46-24-W4-40070-F001A
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0068

Mr. Mercado reviewed the violations

Mr. Madden stated there was a finding of fact that a violation existed. There would be \$285 enforcement costs and \$150 daily fine if not abated within 30 days.

8) DEFENDANT: Schlichte Family Florida LP, Swimming Sunshine
SUBJECT: 34-678 (e) (5) permit required
SITE ADDRESS: 1801 Estero Blvd
STRAP NO: 19-46-24-W4-0080A-0010
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0054

Mr. Mercado reviewed the violations. Zoning Coordinator Chapman stated she had received a partial application on March 26, 2013 (received papers, no payment).

Julie Schwab, representative, stated the fee was what had held them up in regards to applying. She stated she was not aware there was a fee until March 7th. She stated they were a small struggling business. She requested they be allowed some time to pay the fee and not be fined.

Mr. Madden stated there was a finding of fact that a violation existed. There would be \$100 enforcement costs and \$150 daily fine if not abated within 30 days.

9) DEFENDANT: Violet Ruth Keeler TR, Sand Dollar
SUBJECT: 34-678 (e) (5) permit required
34-678 (e) – Outdoor display on Private Property
SITE ADDRESS: 959/963 Estero Blvd
STRAP NO: 24-46-23-W-30050-A018B
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0057

Mr. Mercado reviewed the violations.

AnnMarie Faymen (Not sure of spelling), representative, questioned if mannequins could hang off the hinge of the doors.

Mr. Madden stated there was a finding of fact that a violation existed. There would be \$100 enforcements costs and \$100 daily fine, if not abated within 30 days.

10) DEFENDANT: Bencin Enterprises Inc., 1010-3 Booths Robin Thurston
SUBJECT: 34-678 (e) (5) permit required
34-678 (e) – Outdoor display on Private Property
34-678 (b) (2) – Purpose and Intent
34-678 (d) – Types of Outdoor displays
SITE ADDRESS: 1010 Estero Blvd
STRAP NO: 24-46-23-W3-30001-80000
CODE OFFICER: Robert Mercado
REFERENCE NO: CE13-0073

Mr. Mercado reviewed the violations. Zoning Coordinator Chapman stated they had dealt with the business owner to try and work with them. She stated there were two businesses and they would only be able to have one display each.

Robin Thurston stated Time Square Bizarre was not their business. She stated they were located on the property next to them (the building and front porch). She stated her building was the side property and the ally way. She stated in 2007 they got everything cleared and had a kiosk built (even permitted by Lee County). She stated from 2007 through current they had been told everything was legitimate. Until the first part of 2013 they had been doing business there. She stated the Town has provided Certificate's of Use for the kiosks in the past.

Zoning Coordinator Chapman stated that after staff reviewed the "kiosks", they concluded that the kiosks were "outdoor displays." Discussion held pertaining to how the kiosks were "moveable" so that they could be stored during a hurricane or natural disaster. Grif Thurston stated there was another store between where the kiosks were and after hurricane Charly that business was destroyed the property owner asked them to run some of the businesses.

Mr. Madden stated he was not ready to make an order. He asked staff if they were going to provide testimony that the code had changed. He stated the defendant had provided evidence that showed that the town had legitimized the use.

Ms. Thurston provided the permit she had applied for in 2007was a "special" permit for a freestanding business.

Mr. Madden stated he would continue the case until May. He requested that staff look at the permit history (applied and issued) as well the defendant provide a history of what permits were applied for/issued. He mentioned the prior code enforcement officer, may have not done things correctly. He stated the information would be presented at the next hearing.

11) DEFENDANT:	Lisa Bramm
SUBJECT:	Parking Violation ORd. 03-05, Section 3 (2) M
SITE ADDRESS:	Flamingo St
VIOLATION NO:	70217512
CODE OFFICER:	David Stamps

Town Attorney Miller stated the issue had been resolved.

Vote:_____ Signature:_____

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