IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR LEE COUNTY, FLORIDA

KLC SURF, LLC and TEH4, INC.,

Appellants,

vs.

TOWN OF FORT MYERS BEACH, FLORIDA,

Appellee.

CASE NO. **25-CA-930**

APPELLANTS' RESPONSE TO MOTION TO DISPENSE WITH ORAL ARGUMENT AND EXPEDITE APPELLATE PROCEEDINGS

COMES NOW Appellants, KLC SURF, LLC and TEH4, Inc., by and through its undersigned counsel, and files this Response to Motion to Dispense with Oral Argument and Expedite Appellant Proceedings pursuant to Fla. R. App. P. 9.300 and in support thereof states as follows:

1. On July 7, 2025, Appellants timely filed their Request for Oral Argument pursuant to Fla. R. App. P. 9320.

2. On July 9, 2025, the Town of Fort Myers Beach, Florida ("**Appellee**") filed its Motion to Dispense with Oral Argument and Expedite Appellate Proceedings ("**Motion**"). Namely, the Town has requested that oral argument be dispensed and the case decided prior to FEMA's July 15, 2025, Community Assistance Visit ("**CAV**").

3. Courts will ordinarily docket oral argument upon request from a party, "except in the very rare instance where oral argument is dispensed with by order of the court." *Noel Enterprises, Inc. v. Smitz*, 490 So.2d 95, 96 (Fla. 5th DCA 1986). Dispensing of oral argument is

appropriate when it would serve no useful purpose. See *Perez v. F.W. Woolworth Co*., 220 So.2d 904, 904 (Fla. 1969).

4. The Motions fails to allege or otherwise demonstrate that oral argument would serve no useful purpose.

5. The issues in the case at bar are numerous and complex. Oral argument would enhance the Court's understanding of the case prior to ruling. Therefore, the case is ripe for oral argument and the Town's Motion should be denied.

I. Town Not Prejudiced by Oral Argument

6. The Town argues that it will be prejudiced if oral argument is scheduled because FEMA will impose further sanctions the Town if case is not resolved and therefore if the Development is on the Property during the CAV.

7. On April 28, 2025, the Town received a letter from FEMA that its NFIP eligibility would be reinstated on November 18, 2025. App. p. 18. This letter required the Town to schedule the CAV on or before August 31, 2025. App. p. 18.

8. The Motion was filed less than one (1) week before the CAV. The Town could have filed the Motion prior. Even if the Court dispensed of oral argument, there is no evidence that the appeal would be decided on or before July 14, 2025.

9. The Motion should be denied based on the Town's failure to timely move for expedited proceedings.

A. Town Misrepresents NFIP Requirements

10. The Town's Motion and Brief attempt to place undue blame on Appellants for its National Flood Insurance Program ("**NFIP**") probation.

11. FEMA regulations provide the following standards for placing communities on probation:

> *A community eligible for the sale of flood insurance which **fails to adequately enforce its flood plain management regulations** meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and **does not correct its Program deficiencies and remedy all violations to the maximum extent possible** in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility.*

44 C.F.R. 59.24(c).

12. The Town's NFIP probation is simply a consequence of its failures to adequately enforce its floodplain management regulations. FEMA's specified reasons cite a variety of issues, *one* of which being a *plethora* of noncompliant structures.

13. The Town also misrepresents the legal standard for reinstating its NFIP eligibility.

14. To reinstate its eligibility, FEMA regulations require the following actions:

> *The community's eligibility shall only be reinstated by the Federal Insurance Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken **by the community** to correct Program deficiencies and remedy to the **maximum extent possible** those violations which caused the suspension.*

44 C.F.R. 59.24(c).

15. The Town alleges that it will suffer prejudice if the Development is on the Property during the CAV because not all issues cited by FEMA will have been resolved.

16. The Town is not required to fully remedy all alleged issues that FEMA has cited to reinstate its NFIP eligibility; rather, the standard is that the Town has taken action to correct and remedy issues cited by FEMA to the maximum extent possible.

17. FEMA cited 105 properties for alleged noncompliance. App. p. 20. It is not unforeseeable that one or more of those citations would be found to be incorrect upon adjudication of each case through the code enforcement process. The F.S. Chapter 162 process exists to provide due process in the prosecution of code enforcement cases because the law acknowledges that not all citations are actual violations of the code. Indeed, code enforcement cases often present at least moderately complex issues of fact and law. See *Massey v. Charlotte County*, 842 So.2d 142, 147 (Fla. 2d DCA 2003). However, FEMA does not have jurisdiction to decide code enforcement cases.

18. The Town's Special Magistrate has authority to decide code enforcement cases. This case went through the Town's code enforcement process, was heard by the Special Magistrate, and is now in appeal, which is allowed by right per F.S. 162.11.

19. Under federal regulations, FEMA cannot penalize the Town solely for the Development. This case is pending decision on appeal and therefore the Town has attempted to "remedy" the alleged violation to the maximum extent possible. Any dispute over FEMA's application of 44 C.F.R. 59.24(c) is outside the scope of the case at bar.

20. Therefore, Appellants respectfully request a that the Court deny the Motion for failure to demonstrate that no useful purpose is served by dispensing with oral argument.

B. Any Delay Due to Town

21. On April 8, 2024, FEMA first notified the Town of its material noncompliance with FEMA requirements and provided the Town with a list of properties containing alleged noncompliant structures for the first time. App. p. 1-2.

22. On September 24, 2024, more than five (5) months after FEMA notified the Town of its noncompliance and potential probation, the Town sent the Notice of Violation to Appellants. App. p. 21-22.

23. On November 18, 2024, FEMA placed the Town on probation. App. p. 16-17.

24. On December 23, 2024, the Town sent Appellants the Notice of Hearing. App. p. 32-33. Thus, the Town did not take further action until *after* being placed on probation.

25. Conversely, Appellants have not requested or obtained any extensions of time and have met every deadline in this proceeding.

26. The Town now argues that it is prejudiced by the timing of this appeal, yet any delay stems from the Town's actions or inactions. The Town cannot now argue that it is prejudiced by the timing of the request for oral argument when it could have either expedited proceedings before the Special Magistrate or moved for expedited proceedings prior to six (6) days before the CAV.

27. Appellants respectfully request that the Court deny the Motion on the grounds that any prejudice to the Town was invited by Town action.

II. Town Overstates Risk of Harm during Hurricane Season

28. The Town also argues that the Development's location on the Property presents a safety risk during the current hurricane season.

29. The Town cites the letter from FEMA dated November 12, 2024, as evidence that FEMA determined the Development to be noncompliant and therefore is a hazard. The Motion contains specific reference to the hyperlinked video of the Development embedded in the letter. First, the FEMA letter dated November 12, 2024, does not address any issue with the Development or the Property, but issues related to the overall volume of noncompliant structures in the Town. App. p. 14-15.

30. The Development is mobile and therefore can be quickly evacuated upon issuance of an evacuation order. The most akin uses to the Development are recreational vehicles and food trucks.

31. The Town's floodplain regulations permit recreational vehicles in VE zones so long as they are highway ready, thus allowing removal when a mandatory evacuation order is issued. *See* LDC 6-519(2).

32. The Town has also permitted food trucks, including one on the Property. App. p. 34. Like recreational vehicles, food trucks are highway ready and must be removed upon the issuance of a mandatory evacuation order. App. p. 34.

33. There is no evidence that the Town has deemed other similar uses, such as recreational vehicles or food trucks, to be a danger to life or property at this time. There is also no evidence that the Town as mandated removal of any such uses for the entirety of hurricane season.

34. There is undisputed evidence that the Development can be evacuated quickly and safely, as done prior to Hurricane Milton. App. p. 35-38.

35. The Development presents less of a risk of harm than the other, non-mobile shipping containers in the Town. While an unrelated shipping container became dislodged during Hurricane Helene, the Development remained on the Property and neither incurred nor caused damage to life or property. App. p. 38-41.

36. Conversely, the Town cites FEMA's letter dated November 12, 2024, to support its position that the Development poses an immediate threat of harm to life and property. This letter does not contemplate the Development specifically but addresses the risks associated with a plethora of noncompliant structures. App. p. 14.

37. The Town has failed to demonstrate that the Development presents a risk of harm and has permitted similar uses in the same areas.

III. Dispensing of Oral Argument Would Prejudice Appellants

38. Dispensing with oral argument would prejudice Appellants.

39. Appellants' private property rights are inherently tied to the issue of whether the Development complies with the Town's floodplain ordinance. Appellants rely on the Development for the operation of the restaurant thereon. This Court's determination of whether the Development complies with the Town's floodplain ordinance directly affects Appellants' ability to maintain the existing restaurant use on the Property.

40. The issues in the case at bar are numerous and complex. Oral argument would enhance the Court's understanding of the case prior to its decision.

IV. Expediting Proceedings

41. Appellants do not object to expeditious resolution of the case, except that scheduling oral arguments for any date prior to August would prejudice Appellants due to pre-planned travel for both the undersigned and Mr. Thomas Houghton, President of Appellant TEH4, Inc.

WHEREFORE, Appellants respectfully request that the Court deny the Town's Motion to Dispense with Oral Argument and Expedite Appellate Proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on Gretchen R.H. Vose, Esq. (bvose@voselaw.com), Nancy Stuparich, Esq. (nstuparich@voselaw.com), and Chloe Berryman, Esq. (cberryman@voselaw.com) Vose Law Firm, 324 Morse Boulevard, Winter Park, Florida 32789-4294 (counsel for Respondent) this 14th day of July 2025.

ROETZEL AND ANDRESS, LPA

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