

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

City of Myrtle Beach,

Plaintiff,

vs.

Buchanan Motels, LLC, Atlantica Property Owners' Association, Inc., Captains Quarters Motor Inn, Inc., Coral Beach Homeowners' Association, Inc., Dunes Village Property Owners' Association, Inc., Dunes Village Vacation Owners' Association, Inc., Meridian Plaza HPR Council Co-Owner, Monterey Bay Suites Resort Homeowners' Association, Inc., Patricia Grand Homeowners' Association, Inc., Patricia Grand Resort, LLC, Sea Crest, Inc., The Palace Horizontal Property Regime, Inc, and The Windsurfer, Inc.,

Defendants.

CIVIL ACTION NO.

COMPLAINT
(Declaratory Judgment)
(Permanent Injunction)
(Non-jury)

The Plaintiff City of Myrtle Beach complaining of above captioned Defendants respectfully allege to this Honorable Court:

Jurisdiction

1. The City of Myrtle Beach (the "City") is a municipal corporation organized and existing in accordance with the laws of the State of South Carolina and is located in Horry County, South Carolina.

2. Buchanan Motels, LLC and Atlantica Property Owners' Association, Inc. are duly organized corporations under the laws of the State of South Carolina owning property

known as the Atlantica Resort located at 1702 North Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

3. Captains Quarters Motor Inn, Inc. is a duly organized corporation under the laws of the State of South Carolina owning property known as the Captains Quarters located at 901 South Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

4. Coral Beach Homeowners' Association, Inc. is a duly organized corporation under the laws of the State of South Carolina owning property known as the Coral Beach Resort located at 1105 South Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

5. Dunes Village Property Owners' Association, Inc. and Dunes Village Vacation Owners' Association, Inc. are duly organized corporations under the laws of the State of South Carolina owning property known as Dunes Village Resort I & II located at 5200 & 5300 North Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

6. Meridian Plaza HPR Council Co-Owner is a duly organized corporation under the laws of the State of South Carolina owning property known as the Meridian Plaza located at 2310 North Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

7. Monterey Bay Suites Resort Homeowners' Association, Inc. is a duly organized corporation under the laws of the State of South Carolina owning property known as the Monterey Bay Suites located at 6804 North Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

8. Patricia Grand Homeowners' Association, Inc. and Patricia Grand Resort, LLC

are duly organized corporations under the laws of the State of South Carolina owning property known as the Patricia Grand located at 2710 North Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

9. Sea Crest, Inc. is a duly organized corporation under the laws of the State of South Carolina owning property known as the Sea Crest located at 803 South Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

10. The Palace Horizontal Property Regime, Inc. is a duly organized corporation under the laws of the State of South Carolina owning property known as the Palace Resort located at 1601 South Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

11. The Windsurfer, Inc. is a duly organized corporation under the laws of the State of South Carolina owning property known as the Windsurfer Hotel located at 210 North Ocean Boulevard inside the City of Myrtle Beach, South Carolina.

12. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 2201. As alleged in further detail below, the City seeks declaratory and injunctive relief and damages, claiming that Defendants violate regulations enacted pursuant to the National Flood Insurance Program (NFIP), *see* [42 U.S.C. §§ 4001-4129](#) and enforced by the City through its zoning ordinances.

13. This action is brought in part pursuant to 28 U.S.C. § 2201, Rules 57 and 65 of the Federal Rules of Civil Procedure.

14. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the Florence Division of the United States District Court for the District of the South Carolina because a substantial

part of the events or omissions giving rise to the claims occurred, or a substantial part of property that is the subject of the action is situated, within this judicial division.

FACTS

NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

15. The National Flood Insurance Program (NFIP) was created by the National Flood Insurance Act of 1968. The primary purposes of the 1968 Act creating the NFIP are to :

- a. Better indemnify individuals through flood losses through insurance;
- b. Reduce future flood damages through State and local community flood plain management regulations; and
- c. Reduce federal expenses related to disaster assistance and flood control.

16. Section 1315 of the 1968 Act prohibits FEMA from providing flood insurance unless the community adopts and enforces flood plain management regulations that met or exceed the flood plain management criteria established in accordance with Section 1361(c) of the Act.

17. These flood plain management criteria are contained in 44 Code of Federal Regulations (CFR) Part 60, Criteria for Land Management and Use. The emphasis of the NFIP flood plain management requirements is directed toward reducing threats to lives and the potential for damages to property in flood-prone areas.

18. FEMA monitors communities to ensure that they have adopted an ordinance that meets or exceeds the minimum NFIP flood plain management criteria and to ensure that they are being effectively enforced. While the NFIP flood plain management criteria are administered by the States and local communities through their flood plain management regulations and ordinances, FEMA's role is to provide technical assistance and to

monitor communities for compliance with the minimum NFIP criteria. If communities do not adequately enforce their flood plain management regulations, they can be placed on probation and potentially suspended from the program following probation.

19. After FEMA notes that a community is in violation of the NFIP requirements, the community is provided with reasonable time to demonstrate that buildings are in compliance with the ordinance or it must correct any program deficiencies and remedy any violations found. If the community fails to make progress in resolving its flood plain management issues or chooses not to address them, the community may be placed on probation. While probation has no effect on the availability of flood insurance, an additional charge of \$50.00 is added to the premium for each flood insurance policy for a period of at least one year. A 120-day notice is provided to the community so that FEMA can then give policyholders adequate notice of the impending probation and the additional premium that will be charged.

20. When a community is placed on probation, FEMA sends a letter to the community establishing new compliance deadlines. If the community fails to take remedial measures during the period of probation, the community may be suspended from the NFIP. When a community is suspended from the NFIP, flood insurance is no longer available.

22. The City was accepted in the Federal National Flood Insurance Program (NFIP) in the 1970's. Since that time the residents of Myrtle Beach have been allowed to obtain flood insurance to protect their property.

23. In 1973, the City adopted zoning ordinance 901.15 *Swimming pool enclosures* which was written as follows: "Swimming pools located in required yards may be

enclosed annually between October 1 and May 1; provided that such enclosures, including supports not qualifying as structures, are removed on or before May 2, and remain open through September 30; further provided that such enclosures are constructed of predominantly translucent or transparent materials.“

24. In 1983, FEMA adopted regulations that prohibited glass or other rigid enclosures underneath structures that were located in a flood zone. This was in response to a four year study over 1978 to 1982 where FEMA concluded that safety hazards were caused by glass or rigid plastic enclosures and that for every dollar earned from premiums with underground enclosures, FEMA spent five dollars paying damages claims.

25. In March 2007, FEMA through the South Carolina NFIP State Coordinator's office conducted a community advisory visit and/or compliance check in the City of Myrtle Beach and discovered improperly glass enclosed pools beneath buildings.

26. In April of 2007, FEMA released an updated version of its NFIP regulations that more tightly regulated and illustrated problematic glass pool enclosures. FEMA's updated version clarified its position that temporary glass/ rigid plastic pool enclosures were not allowed at any time during the year.

27. On October 24, 2007, FEMA officially notified the City that for buildings in Special Flood Hazard Areas (SFHA) (Zone A or V) - removable barriers beneath these buildings were considered improper enclosures for which interior uses were limited to parking, storage, and building access. FEMA determined that a swimming pool could be allowed beneath a building only if the top of the pool and accompanying pool deck or walkway were flush with existing grade and only if the lower area (below the lowest floor) remained unenclosed. Lower-area glass or rigid plastic enclosures around pools

were not allowed, even if constructed to breakaway wall standards. FEMA further requested that the City amend its zoning regulations to exclude the use of improper glass enclosures and the improper use of barriers in high hazard flood areas year round.

28. In 2009, FEMA decided that in recognition of the fact that many of the violations in Myrtle Beach had been present for an extended period of time, FEMA and the NFIP State Coordinator would give the City until November 2010 to bring the noncomplying structures into compliance with minimum NFIP standards for barriers and pool enclosures. FEMA stated it expected the City to begin to remedy the violations right away, with the goal of having all noncomplying buildings in compliance by November 1, 2010.

29. On April 13, 2010, the City amended its zoning ordinances to require that property owners comply with CFR Chapter 1, Part 60, Subpart 60.3 of the FEMA regulations for the NFIP. After that date many property owners voluntarily complied with FEMA's regulations. However, some property owners have failed and have refused to comply with FEMA's regulations and the City's zoning ordinances enacted to comply with FEMA's regulations thereby endangering the City and its residents' eligibility for participation in the National Flood Insurance Program.

30. Prior to the enactment of the above mentioned ordinance and thereafter the City duly notified the property owners of the violations and the City has given the property owners ample time to bring their properties into compliance. The City has now re-inspected those properties in the special flood hazard areas after the deadline date for compliance set by FEMA and it has determined that the following properties are not in

compliance with FEMA's regulations and the City's ordinances enacted to comply with FEMA's regulations.

VIOLATORS AND VIOLATIONS

31. Atlantica Resort has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

32. Captains Quarters has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

33. Dunes Village I at 5300 North Ocean Boulevard has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

34. Dunes Village II at 5200 North Ocean Boulevard has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

35. The Palace Motel has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

36. Patricia Grand has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

37. The Windsurfer Hotel has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

39. Meridian Plaza has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

40. Monterey Bay has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina Appendix A, Article IX, Section 909, Floodplain Management Regulation.

41. Sea Crest Resort has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina, Appendix A, Article IX, Section 909, Floodplain Management Regulation.

42. Coral Beach Resort has a glass or plastic pool enclosure that violates the Code of Ordinances of the City of Myrtle Beach, South Carolina, Appendix A, Article IX, Section 909, Floodplain Management Regulation.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

43. Each and every allegation set forth hereinabove is repeated and realleged herein.

44. The City of Myrtle Beach is informed and believes that the National Flood Protection Act of 1968 and Title 44 of the Code of Federal Regulations §§ 60.3 et.seq. which the City enforces as authorized by § 909.14 of Appendix A, Article IX, Section 909 of the Code of Ordinance of the City of Myrtle Beach, South Carolina are duly enacted and valid.

45. The City of Myrtle Beach is informed and believes that as set forth above each of the above captioned Defendants are in violation of National Flood Protection Act of 1968, Title 44 of the Code of Federal Regulations §§ 60.3 et.seq. and § 909.14 of Appendix A, Article IX, Section 909 of the Code of Ordinance of the City of Myrtle Beach, South Carolina.

46. The City of Myrtle Beach is informed and believes that it is entitled to a declaratory judgment from this Court finding that the above captioned Defendants are in violation of the above mentioned statute, regulations and ordinances.

**SECOND CAUSE OF ACTION
(Permanent Injunction)**

47. Each and every allegation set forth hereinabove is repeated and realleged herein.

48. The City of Myrtle Beach is informed and believes that it is entitled to a permanent injunction enjoining the Defendants from violating the National Flood Insurance Program statute, regulations and the City's ordinances enacted to comply with those regulations.

PRAYER FOR RELIEF

Wherefore, the City of Myrtle Beach requests that the Court:

- 1) inquire into the matters set forth in the Complaint;
- 2) issue a declaratory judgment that Defendants are in violation of the National Flood Insurance Program regulations and the City's ordinances enacted to comply with those regulations;

- 3) issue a permanent injunction enjoining the Defendants from violating the National Flood Insurance Program regulations and the City's ordinances enacted to comply with those regulations; and
- 4) award costs and such other relief as may be just and proper; and
- 5) proceed non-jury in this matter.

November 5, 2010

By: s/Michael W. Battle
Michael W. Battle (Fed ID: 1243)
BATTLE & VAUGHT, PA
1200 Main Street
P.O. Box 530
Conway, SC 29528
(843) 248-4321 (o)
(843) 248-4512 (f)
Attorney for City of Myrtle Beach