

MINUTES

KEY COLONY BEACH CITY COMMISSION CONDEMNATION & DEMOLITION HEARING

Thursday, June 23, 2022 – 9:30 A.M

City Hall Auditorium & Virtually via Zoom Conferencing

1. Call to Order, Pledge of Allegiance, Prayer, Roll Call: *The Condemnation & Demolition Hearing of the City of Key Colony Beach was called to order by Vice-Mayor Harding at 09:30 a.m. followed by the Pledge of Allegiance, Prayer, and Roll Call.*

Present: *Vice-Mayor Harding, Commissioner Sutton, Commissioner Ramsay-Vickrey. Excused:* *Mayor Trefry, Commissioner DeNeale.*

Also Present: *Code Attorney Jim Dorl, City Administrator Dave Turner, City Clerk Silvia Gransee, City Attorney Dirk Smits, City Attorney Ryan Benninger, Public Works Department Head Mike Guarino, Building Inspector Gerald Leggett, Chief Kris DiGiovanni, Code Enforcement Officer Stacy Stahl, CPA Jennifer Johnson, Administrative Assistant Christine McLeod.*

Public: 8 Marble Hall, 12 Zoom

2. Swearing in of Witnesses – *City Clerk Gransee administered the Oath of Witness to all wishing to testify.*

3. Citizen Comments and Correspondence – *None.*

4. Agenda Additions, Changes, Deletions – *None.*

5. Disclosure of Ex-Parte Communications – *Code Attorney Jim Dorl explained the ex-Parte communication clause to the Commission. No ex-Parte communications were disclosed.*

6. Condemnation & Demolition: 1000 West Ocean Drive – Owner: China Beach USA, LLC; Nikol Hazan

The City Administrator, Building Official, and City Attorney seek from the City Commission pursuant to Sections 6-41 and 6-42 of the City Code of Ordinances an order condemning the structure located at 1000 West Ocean Drive, previously declared a ‘dangerous building’ by the City Building Official and the City Code Board, and authorizing the City to affect the demolition and removal of the structure and authorizing the cost of same to be specially assessed as a lien against the land.

A. Vice-Mayor Harding *asked if the owner of 1000 West Ocean was present to which Attorney Theron Simmons commented on Zoom that he is there to represent the owner.*

Code Board Attorney Jim Dorl and City Attorney Dirk Smits explained their respective roles to the City Commission.

City Attorney Dirk Smits stated the purpose of the hearing, the proposed emergency procurement order, and turned the meeting over to City Attorney Ryan Benninger to provide evidence and witness testimony. Commissioner Sutton asked for confirmation that since the proposed declaration falls under an emergency, even if the cost exceeds \$25,000.00, the project does not have to go out bid. City Attorney Smits stated that other procedures will be in place and that if the emergency order will be passed no bids will be necessary.

City Attorney Ryan Benninger explained the case to the Commission and the reason for the hearing. City Attorney Ryan Benninger proceeded to call his first witness, City Clerk Silvia Gransee. Code Board Attorney Jim Dorl swore City Clerk Gransee in as a witness. City Clerk Silvia Gransee testified upon questioning by City Attorney Ryan Benninger, that she is the custodian of public records for the City of Key Colony Beach, as well as the preparer for the city’s agendas and all materials contained within the agendas. City Clerk Gransee further testified that she was responsible for today’s agenda and all documents contained within. City Attorney Ryan Benninger asked that the documents contained in the day’s agenda be moved into evidence for today’s proceedings. Attorney Simmons had no

objection and no cross-examination for the witness. City Clerk Gransee was released from testimony. City Attorney Ryan Benninger called Building Official Gerard Roussin as his next witness. Building Official Roussin testified how long he has been the Building Official for Key Colony Beach and his overall duties as such. Upon questioning by City Attorney Benninger, Building Official Roussin explained his familiarity with the property in question and its history. The Building Official continued by describing the structure as a duplex and who the owners are. Building Official Roussin continued recounting the events that led to the notice of violation and stop-work order issued to the property. The Building Official recalled that early February of this year City Administrator Dave Turner received a phone call from Marathon Fire Chief Johnson regarding 1000 West Ocean Drive, who reported that an injury had occurred on the property, and there were concerns of the property being an unsafe structure. Building Official Roussin further testified that upon inspection of the property code violations and substantial spalling were found and a stop-work order was issued. Building Official Roussin continued by testifying that the contractor on record had no knowledge of work being performed nor had knowledge of permits being pulled for the job. Building Official Roussin further testified on the appearance and vacancy of the structure, as well construction debris being on the site. Upon further questioning, the Building Official testified on hazards on ingress and egress due to spalling issues and loose concrete, as well as a fire hazard due to a common party wall. Building Official Roussin continued testifying on the extensive damage of the structure including spalling, no mechanical systems on site, exposed outlets, and cut waste lines not being capped. Building Official Roussin affirmed upon questioning that he found the structure unsafe, unsanitary, and uninhabitable, and that he reported his findings to the City Administrator as well as Code Enforcement. The Building Official further testified on emailing the owner of the property and the contractor on record. Building Official Roussin continued saying that the contractor on record did not know about the work being performed under his name nor had he pulled any permits, and that the permit on record was not legal. Building Official Roussin further testified that the owner was notified that an engineer's report was needed as well as core sampling to know what condition the concrete was in. The Building Official reported that an engineer's report was received from a local engineer which stated what repairs needed to be done to the structure. City Attorney Ryan Benninger asked for the engineer's report to be moved into evidence. The opposing counsel had no objections. Building Official Roussin further testified that a building application from the owner for repairs was received for approximately \$100,000.00 in repairs. The Building Official stated that his department did a cost-analysis comparison with different contractors and the Building Department estimated the cost of repairs to be between \$140,000.00 to \$150,000.00. Building Official Roussin explained the significance of the cost of repairs in correlation to the 50% rule and having informed the owner of that rule as well. Building Official Gerard Roussin continued testifying that no work had been done on the building and conditions of the stipulated agreement were not being upheld. City Attorney Ryan Benninger asked that the Code Order and Stipulated Agreement were entered into the record to which the opposing counsel had no objection. Upon further questioning by City Attorney Benninger, Building Official Roussin testified that no conditions of the stipulated agreement were met and the case was brought back to the Code Board. Building Official Roussin stated that the Code Board found the owners in violation of the stipulated agreement. City Attorney Ryan Benninger asked that the Findings of Fact by the Code Board to be moved into evidence to which the opposing counsel had no objections. Building Official Roussin further testified that the Code Board found the structure dangerous and unsafe and that an additional demolition permit application was issued to the owner but none of the work was done. Building Official Roussin testified that Mr. Orlando Fernandez, the owner of the adjacent duplex, has emailed several times with concerns for the safety of his family, fear of fire, as well as fears of the building collapsing on top of his house due to a storm. The Building Official testified that he has received similar concerns from other residents as well. Upon further questioning, Building Official Roussin testified that he feels the structure is a threat to public safety, in particular to the Fernandez Family, and that the structure warrants an order of condemnation and demolition. City Attorney Ryan Benninger asked Building Official Roussin on how long he would think the demolition of the building would take. The Building Official explained an electrical problem was found, with the duplexes sharing a weather head that needs to be addressed prior to demolition of 1000 West Ocean. Building Official Roussin explained that the owners of both properties must address the problem and the contractor is aware of the issue. Building Official Roussin estimated, upon questioning, that the cost of demolition including the electrical work to be around \$30,000.00, and that there is an emergent need to demolish the structure. Building Official Roussin stated that he has concerns for the neighbors and the City of Key Colony

Beach and that he believes that the structure should come down as soon as possible. City Attorney Ryan Benninger had no further questions for the Building Official. Attorney Simmons asked Building Official Roussin if at the current time the owner of the property, China Beach, could not continue with the demolition of the property to which the Building Official stated, that China Beach could continue with the demolition of the property but that the electrical issue has to be resolved first. Building Official Roussin further confirmed upon questioning that the electrical issue must be resolved prior to demolition and that the City requires an agreement with the neighbor. Attorney Simmons asked Building Official Roussin further to confirm that if the neighbor is not agreeing on the electrical work, that it would not be the owner's fault that the demolition is not happening, to which Building Official Roussin stated he has no knowledge of any conversations. Attorney Simmons had no further questions. City Attorney Ryan Benninger asked the Building Official if there has been anything that would have prevented China Beach from meeting the timelines that the city had provided throughout the process, to which the Building Official stated he is not aware of or has been made aware of. Commissioner Sutton asked if Mr. Orlando Fernandez was attending the meeting via Zoom to be able to make a statement regarding the electrical issue. Mr. Orlando Fernandez was not available via Zoom. Commissioner Sutton further stated he believes that it is important for Mr. Orlando Fernandez to be involved in the conversation and it seems like the city's hands are tied until the issue has been resolved. Commissioner Sutton continued saying that the property does not represent Key Colony Beach as the Gem of the Florida Keys. The City rested its case with a reservation for rebuttal.

B. *City Clerk Gransee swore in Jack Garcia, a state licensed electrical contractor, as a witness for the opposing counsel. Mr. Garcia testified to the nature of his job and former job experience. Upon further questioning, Mr. Garcia testified that he was hired by China Beach as the electrical contractor to split the electricity, reroute the electric underground, to de-energize the existing weather head, and to install new meters. Mr. Garcia further explained why the electrical work is necessary prior to demolition and that he has been in contact with the Building Official as well as the Electric Company regarding the work that has to be done. Mr. Garcia further testified that he registered his State license with Key Colony Beach, and that a permit has been notarized and filled out by China Beach. Mr. Garcia continued by saying that he had been told that an affidavit was needed from Mr. Orlando Fernandez who he had been trying to contact over the last ten days via emails and phone calls. Mr. Garcia stated that the last conversation with Mr. Fernandez was two nights ago, and that he has text messages and emails going back and forth. Mr. Garcia testified the location of the current meters and where Mr. Fernandez wants to have his new meter placed. Mr. Garcia further testified that the location where Mr. Fernandez would like to have the new meter installed does not comply with code requirements. Mr. Garcia stated that there was an unclear conversation with Mr. Fernandez about the issue due to a bad phone connection, and that he has not communicated with him since then. Mr. Garcia continued explaining that he had been on the property marking where the trench will go and that Mr. Fernandez complained on the markings on his grass. Mr. Garcia testified that he has everything in place to pull the permit but he cannot continue without Mr. Fernandez' affidavit. Upon further questioning Mr. Garcia testified that the phone conversation with the bad connection was three days ago and that he had been unable to reach Mr. Fernandez since then regarding the placement of the new meter. Mr. Simmons had no further questions for Mr. Garcia. City Attorney Ryan Benninger asked Mr. Garcia on when he was hired, to which Mr. Garcia replied about 10 days ago by the owner of the property. Mr. Garcia further testified that he was not aware of the stipulated agreement between China Beach and the city, but that he was aware that it was a demolition project. Mr. Garcia stated that he was not aware of timelines for the demolition and that he is only the electrician trying to fix the situation but is running into a roadblock with the neighbor not being cooperative. Upon further questioning by Attorney Benninger, Mr. Garcia testified that he communicated the problems with Mr. Fernandez to the owner and his counsel. Mr. Garcia testified further that he had been in communication with the Building Official who had indicated that it might not be easy to work with Mr. Fernandez. City Attorney Ryan Benninger continued questioning Mr. Garcia on having updated the Building Department on his efforts to complete the electrical work which Mr. Garcia denied. Upon further questioning, Mr. Garcia explained the timeline on completion of the work and stated that overall, it would take about a week from the time the permit would be pulled. Mr. Garcia further explained the details of the upcoming work to complete the electrical work. Attorney Benninger had no further questions. Mr. Simmons had no redirect for the witness but stated that he had been in communication with the*

counsel for the city on the issue of the affidavit. Mr. Simmons had no further witnesses. Vice-Mayor Harding asked Mr. Simmons if a contractor “was lined up” for demolition, to which Mr. Simmons stated he was not sure and had to check with the owner. Mr. Garcia stated that he believes a contractor was hired for demolition which is the same contractor to dig the trench. Commissioner Beth Ramsay-Vickrey asked Building Official Roussin how the city is planning on resolving the electrical issue with the neighbor in case the city will take over the demolition of the property. Building Official Roussin stated that cooperation from Mr. Fernandez will be needed and an electrician would have to be hired, in addition with working with FKEC to complete the work. Building Official Roussin further stated that he agrees with Mr. Garcia on the estimated timeline for the completion of the work. Commissioner Sutton asked Building Official Roussin on why Mr. Fernandez must be involved if code requirements have to be followed. The Building Official explained that it is code for new construction and the new building will have to have the power underground. Mr. Simmons asked if Mr. Fernandez would need an affidavit to restore power to his house in case a storm would knock down his wall, which the Building Official confirmed. There were no more questions from the participants. City Attorney Ryan Benninger presented his closing arguments and asked for an emergency declaration to be entered if an order is issued, that will allow the city to follow emergency procurement procedures. Commissioner Beth Ramsay-Vickrey asked for clarification on timelines in the proposed order which City Attorney Benninger explained that the owners will have a set amount of time to comply with the order first and that the city will take over after. City Attorney Smits explained that the owners must be provided with a window of time to complete the work. Mr. Simmons presented his closing arguments. Commissioner Sutton stated to City Administrator Dave Turner that he would like to see involvement from Mr. Orlando Fernandez to resolve the situation. City Attorney Smits stated that proceedings against the neighbor might be possible if no cooperation could be achieved and further explained possible future scenarios. Commissioner Sutton made a motion to allow 15 days for the owners to complete the demolition. City Attorney Smits stated that his office will prepare an Order of Findings of Fact, which will be submitted to Mr. Simmons for review and Mr. Dorl next week. Attorney Jim Dorl asked for clarification if the 15 days would be only for the electrical work or for everything which was clarified as everything. Vice-Mayor Harding asked for clarification on the exact date for completion, which was agreed upon to be Friday, July 15th, 2022. Vice-Mayor Harding seconded the motion.

MOTION: *Motion made by Commissioner Sutton, seconded by Vice-Mayor Harding, to allow the owner to complete the demolition by July 15th, 2022.*

DISCUSSION: *City Administrator Dave Turner asked if Mr. Orlando Fernandez was attending the Zoom meeting which he confirmed. City Clerk Silvia Gransee swore Mr. Orlando Fernandez in as a witness. Neither the city nor Mr. Simmons objected to Mr. Fernandez testifying. City Attorney Dirk Smits asked Mr. Orlando Fernandez on his ability to sign off on the work required to be done for 1000 West Ocean. Mr. Orlando Fernandez stated that he would be able to eventually but listed several concerns that he needs to address prior. Mr. Fernandez further detailed his concerns. City Attorney Smits asked Mr. Simmons if he can agree with what Mr. Fernandez is asking for. Mr. Simmons stated no, at which point Mr. Smits stated that if the parties cannot agree on a solution, the City will have to be asked to pass the 15 days and the parties can try to work it out during that time. Discussion continued between Mr. Fernandez and Mr. Garcia on the placement of the meter, digging of the trench and repairs to the grass, as well as the common wall between the two properties. Vice-Mayor Harding stated to Mr. Fernandez and Mr. Garcia that the city will have to move on with the meeting and asked City Attorney Dirk Smits on the options to move forward. City Attorney Dirk Smits clarified the available options and his thoughts on the issue. Vice-Mayor Harding stated that this brings them back to the Motion that is on the floor and asked City Clerk Gransee to do roll call.*

ON THE MOTION: *Roll call vote. Unanimous approval.*

City Attorney Dirk Smits stated for the record that his office will circulate the order including the testimony of Building Official Roussin, and that the Findings of Fact and Conclusion of Law will be provided to Mr. Simmons and Mr. Dorl, and after review, the order can be signed and the timeframe will be until July 15th, 2022. City Attorney Dirk Smits stated that there will be also an emergency declaration for the purposes of bidding circulated as well.

7. **Commissioner Comments** – None.

8. **Adjourn:** The meeting adjourned at 10:47 a.m.

Respectfully submitted,

Silvia Gransee

City Clerk

ADOPTED: July 14, 2022

Silvia Gransee

City Clerk