

# **DOAH MINUTES**

## **CITY OF KEY COLONY BEACH - CODE COMPLIANCE HEARING**

Wednesday, July 12, 2023 - 9:48 am

Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach  
& Virtually via Zoom Webinar

**A. Call to Order:** Judge Van Laningham called the meeting to order at 9:48 am followed by the reading of the Florida Statutes pertaining to the hearing. **Present:** Judge Van Laningham, Assistant City Attorney Ryan Benninger, Code Enforcement Officer Barry Goldman, Building Official Lenny Leggett, Building Assistant Karl Bursa, City Clerk Silvia Gransee, Administrative Assistant Cheryl Baker. **Also present:** Matthew Hutchinson, Esq. of the firm Hershoff, Lupino & Yagel, LLP., Dale R. Coburn III, Esq. of the firm Wolf Stevens PLLC.

**B. Pursuant to Florida Statutes Section 286.0105,** be advised that, if a person decides to appeal any decision made by the Special Magistrate with respect to any matter considered at today's hearing, that person will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeals it to be based.

**C. Pursuant to Florida Statute Section 162.07,** if the City of Key Colony Beach prevails in prosecuting a case before the Special Magistrate, the City of Key Colony Beach shall be entitled to recover all costs incurred in prosecuting the case before the Special Magistrate and such costs may be included in the lien authorized under Section 162.06(3), Florida Statutes.

**D. Swearing in of Witnesses to Testify:** Judge Von Laningham administered the Oath of Witnesses to all expected to testify.

**E. Mitigation Orders Issued/Summary:** None.

### **F. CASES FOR TODAY'S HEARING:**

City Attorney Benninger asked for the addition and approval of the June 13<sup>th</sup> DOAH proceeding minutes and asked for guidance on future proceedings. Judge Van Laningham asked on objections to the approval of the minutes. There were none. The minutes were approved as written.

There were no additional administrative items.

For the convenience of the Parties, and in order to promote judicial economy, Assistant City Attorney Benninger requested the Court to modify the agenda lineup so that line item F (3) may be heard first. Judge Van Laningham stated that he had no objection to the City's request. Assistant City Attorney Benninger confirmed the physical location of the presentation of witnesses.

**1. (3.) Property Address/Owner: 300 3<sup>rd</sup> Street – Michael D. Smith**  
**Violation: Key Colony Beach Code of Ordinances, 6-56, Maintenance, and 6-34, Standards.**

Code Enforcement Officer Goldman notified the Court that the Respondents were not in attendance in person at the hearing. It was also confirmed that they were not present remotely over Zoom Meetings. Judge Van Laningham recommended deferring the case to a later time for the Respondents to have an opportunity to make their appearance. The City noted there were no objections.

**2. Property Address/Owner: 711 W. Ocean Drive – Casa Del Sole**  
**Violation: Key Colony Beach/Monroe County Ordinance Chapter 12, Article 5, Sec. 12-116. Standards for exterior artificial lighting (turtle lighting).**

Assistant City Attorney Benninger presented the case in summary to Judge Van Laningham. Respondent's Counsel Dale R. Coburn III, Esq. presented oral argument on behalf of the Respondent, as well as moving for the dismissal of the code enforcement case for a lack of jurisdiction to enforce. Assistant City Attorney Benninger presented the City's counter argument for dismissal and further stated the City's position on non-compliance by the Respondent. Judge Van Laningham reserved his ruling on the motion and continued the matter until the next hearing in August. The Special Magistrate further directed the Respondent to submit its Motion to Dismiss to the City Clerk within seven days no later than July 19<sup>th</sup>, 2023. In return, Judge Van Laningham instructed the City to file its response to the Respondent's Motion to Dismiss with the City Clerk to be transmitted to the Court no later than seven (7) days following service of process of the Respondent's Motion.

**3. (3.) Property Address/Owner: 300 3<sup>rd</sup> Street – Michael D. Smith**  
**Violation: Key Colony Beach Code of Ordinances, 6-56, Maintenance, and 6-34, Standards.**

Assistant City Attorney Benninger re-called the matter for the Court's consideration of violation against the property located at 300 3<sup>rd</sup> Street.

After confirming for the second time that the Respondent were neither present in person nor via Zoom, Judge Van Laningham asked Code Enforcement Officer Goldman to explain his contact with the property owner. Code Enforcement Officer Goldman stated that he had prior contact with the Respondent, and that the City had provided they property owner reasonable time to correct the pending violation against the property. Code Enforcement Officer Goldman further stated that he ultimately lost contact with the Respondent.

Judge Van Laningham then asked for the case to be presented for his consideration of ruling.

Assistant City Attorney Benninger presented the case to Judge Van Laningham and detailed the alleged violation. Code Enforcement Officer Goldman then testified to his observations and investigation of the alleged violation and his reasoning for bringing code enforcement proceedings. Code Enforcement Officer Goldman further testified on having no knowledge of planned improvements and his responsibilities as the City's Code Enforcement Officer.

The City then presented testimony regarding the imposition of fines. Assistant City Attorney Benninger moved the Court for the entry of an order directing the Respondent to provide a Professional Engineering Report within 30 days to make part of the findings.

Judge Van Laningham found that a violation had occurred, and further ordered that the Respondent had thirty (30) days in which to bring the Property into compliance. The Special Magistrate then instructed the City to prepare the Order to be submitted for entry as soon as possible.

**4. (1) Property Address/Owner: 908 W. Ocean Drive – Jody Cox**

**Violation: Key Colony Beach Code of Ordinances Sec. 6-6. Construction Activities without a Permit.**

Assistant City Attorney Benninger presented the matter before Judge Van Laningham and recalled the history of the Respondent's violation and the prior Code Enforcement Proceedings resulting in violations being found at the hearing held on January 11, 2023. Assistant City Attorney Benninger stated the Parties were now back before the Court for the imposition of fine because the Respondent was non-compliant with the terms and conditions of the Final Code Enforcement Board Order entered on or about February 27, 2023.

Attorney Hutchinson then presented the case on behalf of the Respondent. Judge Van Laningham asked Attorney Hutchinson for clarification of the dispute. Attorney Hutchinson then moved for the dismissal of the case claiming the code enforcement proceeding was premature. The City presented a counterargument disputing the Respondent's contention. The Special Magistrate denied the Respondent's Motion.

Code Enforcement Officer Barry Goldman then testified in support of the City's position that the Respondent failed to timely abide by the terms and conditions of the Code Enforcement Board's Final Order. The City's Building Official Lenny Leggett then testified giving his recollection of events.

Attorney Hutchinson then cross-examined Building Official Leggett.

Assistant City Attorney Benninger clarified the scope of fine proceeding to Judge Van Laningham being limited to only whether the Respondent complied with the terms and conditions of the Code Enforcement Board's Final Order.

The Respondent then testified regarding the violation and his statement on compliance and steps he has taken to comply with the terms and conditions of the Code Enforcement Board's Final Order.

Arguments followed by both counsel on the admissibility of additional documentary evidence and scope of the immediate fine imposition proceeding and interpretations by both attorneys.

Testimony by the Respondent concluded with a brief cross examination by Assistant City Attorney Benninger.

Further argument followed on the admissibility of evidence.

Testimony then closed and the Parties concluded their respective cases in chief.

Judge Van Laningham summarized the proffered testimony and found that a demolition permit had not been obtained by the Respondent. He ruled that the Respondent failed to bring the Property into compliance in accordance with the Code Enforcement Board's Final Order entered after the hearing on January 11, 2023. Judge Van Laningham asked the City what relief is being sought. Assistant City Attorney Benninger asked the Court to assess a \$250.00 per-day-fine to be imposed until the Respondent becomes compliant. Assistant City Attorney Benninger further asked for the authority for remedial action by removing the subjects electricity lines, recovering costs for remedial tasks, and placing a further lien on the property.

Judge Van Laningham clarified the date of January 11<sup>th</sup> as the retro-active date for the accumulation of assessments of fines and asked the Respondent's counsel for comment.

Attorney Hutchinson stated unjust finding to the Court with Assistant City Attorney Benninger citing objections as being untimely. Discussion on testimony continued. Judge Van Laningham stated for the Code Board Order to be clear and for the court to carry out the order as it was written and entered by the Code Board.

Judge Van Laningham stated to have found that the City had established Respondent's non-compliance with the Code Enforcement Board's Final Order and restated the retro-active assessment of fines and how compliance was to be achieved.

Assistant City Attorney Benninger then reserved the cost of prosecution on behalf of the City.

Attorney Hutchinson asked for a stay of the City's authorization for demolition for thirty (30) days subject to appeal.

Judge Van Laningham asked for the orders to be issued and for the Respondent to have the ability to file for a stay when an appeal was filed.

Code Enforcement Officer Goldman informed on the City Commission approval procedures and timeline for the Special Magistrate's order to be approved. Judge Van Laningham stated understanding on the process and asked for the orders to be issued.

Judge Van Laningham adjourned the hearing at 12:12 pm.

Respectfully submitted,

*Silvia Gransee*

City Clerk

***ADOPTED: October 11, 2023***

***Silvia Gransee***

***City Clerk***