

DOAH MINUTES

CITY OF KEY COLONY BEACH - CODE COMPLIANCE HEARING

Wednesday, October 11th, 2023 - 9:30 a.m.

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

- A. Call to Order:** The City of Key Colony Beach Code Compliance Hearing was called to order by Judge Van Laningham at 9:36 am followed by the reading of Florida Statutes pertaining to the hearing. **Present:** Judge Van Laningham, Code Enforcement Officer Barry Goldman, Assistant City Attorney Ryan Benninger, Building Official Lenny Leggett, Administrative Assistant Tammie Anderson, City Clerk Silvia Gransee. **Also Present:** Attorney Andrew M. Tobin, P.A., Respondent Richard Harper.

- 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. Approval of Minutes from July 12th, 2023:** Judge Van Laningham asked for any objections to the approval of minutes. There were none and the minutes were approved as written.

- E. Swearing in of Witnesses to Testify:** Judge Van Laningham administered the Oath of Witness to all planning on testifying.

- F. Mitigation Orders Issued/Summary:** None.

G. CASES FOR TODAY'S HEARING

- 1. Property Address/Owner: 680 11th Street – Owner: Richard B. Harper
Violation: Construction Activities without a Permit, Section 6-6 (1)(b)(d)
Notice of Public Hearing & Affidavit of Services
 - i. Exhibit A
 - ii. Exhibit B
 - iii. Exhibit C
 - iv. Exhibit D

Attorney Tobin asked for confirmation on the use of the hearing recording and it's admissibility in case of an appeal. The Parties discussed responsibilities of making a recording and opposing Attorney Tobin asked for a continuance. Assistant City Attorney Benninger objected with the

continuance. Judge Van Laningham stated the Zoom recording to be sufficient to create a transcript. The Parties agreed the Zoom recording to be adequate.

Attorney Tobin asked for clarification on what violations the case is being heard on. Discussion followed on the case being two separate matters.

Assistant City Attorney Benninger requested that Judge Van Laningham hear the case in its entirety and summarized the violation and sequence of events.

Testimony was given on prior Code Enforcement Orders, Appellate Court Orders, Briefs, and Writs that were issued and filed. Additional testimony confirmed that no proceedings were pending and the case could go forward.

Judge Van Laningham introduced the case and asked Assistant City Attorney Benninger to present case on behalf of the City.

Assistant City Attorney Benninger presented the matter before Judge Van Laningham and informed on the procedural history of the Code Enforcement proceeding from May 11, 2022, and the Code Board's findings and conclusions of law, as well as the assessment of fines.

Assistant City Attorney Benninger stated for the record that it was the City's position that the Respondent failed to abide with the terms and conditions of the Code Board's Final Order. As a consequence of non-compliance, Assistant City Attorney Benninger requested that the Special Magistrate impose fines.

Assistant City Attorney Benninger called Code Officer Goldman as the City's first witness.

Code Officer Goldman offered testimony on prior communications with Building Official Leggett and later issuing letters and notices of non-compliance.

Argument between the Parties continued on the violations being heard as one or two separate cases.

Attorney Tobin argued to the Court that no final determination on fines was made by the Appellate Court.

Judge Van Laningham gave his understanding of the violations and overruled Attorney Tobin's objection on separate hearings.

Assistant City Attorney Benninger continued presenting the City's case-in-chief to the Court and clarified compliance dates and stated for the validity of the Court order having been confirmed by the Appellate Court.

Judge Van Laningham gave his understanding on the matter and asked for the City to continue its case.

Code Officer Goldman continued his testimony on the matter including the issuance and purpose of a stop-work order.

The hearing was interrupted by technical difficulties. After returning to the record, Code Officer Goldman repeated his prior testimony.

Code Officer Goldman also testified to observing violations in person and on social media, as well as the sequence of events.

Assistant City Attorney Benninger passed the witness for cross examination.

Attorney Tobin cross-examined Code Officer Goldman on Florida Statutes and definitions of violations.

Testimony by Code Officer Goldman continued on his observances on violations followed by arguments of relevance of testimony to the matter.

Code Officer Goldman testified to prior correspondence from Building Official Leggett to the Respondent and his understanding of the matter.

Cross-examination continued on Code Officer Goldman's observations and Florida Statutes on stop-work orders.

Attorney Tobin asked Code Officer Goldman to read the Statute pertaining to stop-work orders into the record and asked his understanding of the law.

Cross examination continued on permit requirements and argument by both Parties.

Testimony continued by Code Officer Goldman on issued and expired permits and completed work.

Judge Van Laningham called for a 10-minute recess at 11:05 am.

The hearing continued at approximately 11:15 am.

Attorney Tobin asked for exhibits to be marked and added to the record. After argument, the Parties agreed to identify the exhibits and add them to the record. Code Officer Goldman identified 17 photos as Composite 'A', a social media post and picture as Composite 'B', and 6 inspection reports as Composite 'C', and exhibits attached to the pleadings as evidence.

Assistant City Attorney Benninger called Building Official Lenny Leggett to testify. Building Official Leggett testified to his involvement in the matter and gave a timeline of events, and his understanding of the nature of the permit and violations. Further testimony followed on Building Official Leggett's requirements for compliance.

The hearing was again interrupted by technical difficulties. Judge Van Laningham restated testimony prior to the loss of connection.

Attorney Tobin then continued cross-examining Building Official Leggett. Building Official Leggett testified to submitted evidence by opposing counsel and knowledge of building code and permits. Cross-examination continued by Attorney Tobin on responsibilities of property owners and contractors regarding building permits.

Building Official Leggett testified on completed inspections and his understanding of the Code Board Order and building inspection schedules.

Testimony followed on exchanged correspondence between the Respondent and the Building Department, timeline of events, and requirements for code compliance.

Testimony continued and argument by both Parties on the relevance of the testimony.

Judge Van Laningham asked for clarification on Attorney Tobin's cross-examination and purpose of detailed questioning.

Attorney Tobin objected to Assistant City Attorney Benninger's reading of the Code Board Order.

Judge Van Laningham asked for cross-examination to continue.

Cross-examination continued on code requirements for the respondent to achieve compliance.

Argument by Attorney Tobin continued on purpose of cross-examination and the establishment of defense points.

Judge Van Laningham stated his understanding of the final Code Board order be valid and affirmed by the appellate court. Attorney Tobin gave argument in opposition.

Cross-examination continued of Building Official Leggett followed by a redirect by Assistant City Attorney Benninger.

Attorney Tobin asked for correspondence to be entered into evidence. Discussion followed on the admission of evidence. Judge Van Laningham asked to wait to receive the evidence during Mr. Harper's testimony.

Assistant City Attorney Benninger called Mrs. Baran-Cisna as his next witness.

Judge Van Laningham administered the Oath of Witness to the witness.

Mrs. Baran-Cisna testified to her involvement and knowledge on the matter. Mrs. Baran-Cisna testified to her observations on violations and state of property.

Judge Van Laningham accepted the testimony.

There was no cross-examination and no further witnesses.

Judge Van Laningham called for a recess at 1:52 pm.

The Hearing continued at 1:04 pm.

Judge Van Laningham called the hearing back to order.

Attorney Tobin rested his case and Judge Van Laningham asked for closing arguments.

Assistant City Attorney Benninger and Attorney Tobin presented their respective closing arguments on behalf of the Parties to the court.

Attorney Tobin asked for the Respondent's response to be entered into testimony.

Judge Van Laningham received the letter as evidence despite the Respondent not having testified and asked for the City's exhibit as well.

Judge Van Laningham asked for the Parties to submit proposed orders for consideration.

After discussion, Judge Van Laningham agreed to a timeline for submissions of proposed orders by November 17th, 2023.

Judge Van Laningham clarified the submission requirements and asked for exhibits to be submitted in a timely manner.

Judge Van Laningham adjourned the hearing at 1:24 pm.

Respectfully submitted,

Silvia Gransee

City Clerk

ADOPTED: December 13, 2023

Silvia Gransee

City Clerk