

**CITY OF KEY COLONY BEACH, FLORIDA  
CODE ENFORCEMENT SPECIAL MAGISTRATE**

CITY OF KEY COLONY BEACH, FLORIDA,

Petitioner,

v.

Doc # 2448984 Bk# 3259 Pg# 2344  
Recorded 1/25/2024 4:11 PM Page 1 of 7

JODY F. COX (908 W Ocean)  
PO Box 510133  
Key Colony Beach FL 33051

Filed and Recorded in Official Records of  
**MONROE COUNTY KEVIN MADOK, CPA**

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KARI ANN TREMBLAY (918 W Ocean)  
PO Box 510106  
Key Colony Beach FL 33051

CHRISTOPHER CORSO (928 W Ocean)  
PO Box 510778  
Key Colony Beach FL 33051

Respondents.

**COMPLIANCE ORDER**

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IN RE: 908/918/928 W Ocean Drive, Key Colony Beach, Florida 33051  
PARCEL ID NOS. 00075450-000100, 00075450-000000, 00076160-000100

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VIOLATIONS: General Construction and Maintenance, Chapter 5, sections 5-62

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The Code Enforcement Special Magistrate for Key Colony Beach, Florida, having before it the above-referenced Code Violations, Sec. 5-62, General Construction and Maintenance, and having conducted an evidentiary hearing in the matter on December 13, 2023, now issues the following **COMPLIANCE ORDER**.

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**FINDINGS OF FACT**

1. The collapsed seawall cap in question sits at the end of the seawall walkway affixed to 928 W Ocean, and at the corner of 908 W Ocean, and at the end of a boat ramp wall for 908 and 918 W Ocean, and serves as an access walkway to boat slips for 908 and 918 W Ocean, with deeded access/easement privileges granted to all three properties.

2. The aforementioned seawall cap collapsed in 2023 when Christopher Corso, owner of 928 W Ocean, was standing on it, and he effectuated the good Samaritan repair.

3. Since August, 2022, the Key Colony Beach Code Enforcement Officer had several conversations with the above three owners of the properties as to the boundary lines for this part of the seawall cap, as well as repair concepts. Tremblay and Corso, owners of 918 and 928 W Ocean Drive, respectively, proposed a plan to have all three owners contribute to the cost of repair as all three owners enjoy deeded rights to this seawall cap.

4. Despite this offer, Cox has failed and refused to discuss the matter with Tremblay and Corso, and he has insisted on Code Enforcement proceedings, even though he is named Respondent given his deeded easement rights to this area.

5. Although the collapsed seawall area in question may lie outside the specific plot lines of these three properties, all three Respondents acknowledge they are “owners” of the deeded dominant easement rights to this same area.

6. Petitioner, the City of Key Colony Beach, has a legal interest in, and expectation of, this seawall cap being repaired to a proper, safe and code conforming condition, to wit:

**Sec. 5-62. - General construction and maintenance.**

It shall be the responsibility of the owners of seawalls, bulkheads, docks, piers, davits, boat slips and boat lifting devices to construct and maintain them in a safe and sturdy condition, and in compliance with the provisions of this chapter. Upon the failure of an owner to comply herewith, the city shall have the authority to enter the property and make such changes or corrections as are necessary to assure compliance with this section. The cost of work so done shall be assessable to the owner or owners of the property so maintained, and shall constitute a lien against such property collectible in the same manner as special assessments for public improvements.

7. Section 1-2, Rules of Construction, the City of Key Colony Beach defines “owner” as follows:

Owner. The word “owner” applied to a building or land, shall

include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of part of such building or land.

8. The City has proved that Respondents are in violation of Section 5-62, General Construction and Maintenance, for which a penalty of up to \$250.00 per day may be imposed.

### **CONCLUSION OF LAW**

1. The collapsed seawall cap is a life-safety hazard, and the Petitioner, the City of Key Colony Beach, has a legal interest in, and expectation of, this seawall cap being repaired to a proper, safe and code conforming condition pursuant to Sec. 5-62. - General construction and maintenance.

2. In a Motion to Dismiss filed on December 12, 2023, Cox argued that he is not an “owner” as defined in Section 1-2, Rules of Construction, because he is none of the types of owner specifically named therein. Cox is, however, an easement owner, which means that he has a right to use the property in question for a specific purpose. Moreover, “the general rule [is] that, absent an agreement to the contrary, the burden of maintenance and repair falls on the dominant tenement (easement owner) rather than the servient tenement (underlying land owner).” *Zipkin v. Rubin Const. Co.*, 418 So. 2d 1040, 1043 n.5 (Fla. 4th DCA 1982). ); *see also, Morrill v. Recreational Dev., Inc.*, 414 So.2d 590, 591 (Fla. 1st DCA 1982). Thus, because Cox is an owner of an easement giving him a right to use the property that includes the subject seawall, Cox has a legal duty to repair the seawall cap.

3. The undersigned rejects Cox’s contention that the term “owner” includes *only* those types of owners specifically mentioned in the relevant definition. If the drafters of the definition had intended to limit its reach to the enumerated list, they would have used the restrictive adverb “only” to cabin the verb “include” or, more likely, simply would have said

“shall mean.” Without a specific restriction, however, as is the case here, the term “include” is nonlimiting and, hence, best understood and applied as illustrative, rather than exhaustive. *See Childers v. State*, 936 So. 2d 585, 597-98 (Fla. 1st DCA 2006).

4. It is concluded, therefore, that all three Respondents are “owners” of deeded dominant easement rights to this same area, and as owners of this “dominant easement” all three Respondents are deemed “owners” of the seawall cap area pursuant to Key Colony Beach Code, section 1-2, Rules of Construction, and 5-62, General construction and maintenance.

5. Accordingly, as equal dominant easement holders of/over this collapsed seawall cap, all three Respondents share equal responsibility to repair and maintain this seawall cap area,

#### **ORDER FOR COMPLIANCE**

1. Based on the foregoing Findings of Fact and Conclusions of Law, the Special Magistrate now holds that Respondent Cox’s Motion to Dismiss is hereby denied.

2. Based on the foregoing Findings of Fact and Conclusions of Law, the Special Magistrate now finds that all three Respondents have violated Section 5-62 of the Code of Ordinances of the City of Key Colony Beach, Florida.

3. Accordingly, all three Respondents must immediately:

a. obtain one or more licensed Florida contractors to furnish an estimate of repair for the collapsed seawall cap area in question, and:

b. the chosen Florida licensed must then obtain a Key Colony Beach Building Permit to repair said collapsed seawall cap area, and:

c. All three Respondents must share equally in all costs associated with this repair.

4. If Respondents fail to bring the Property back into compliance with the Code of Ordinances of the City of Key Colony Beach, Florida, within 60 days of the date of this Order the City shall be authorized to undertake efforts to repair, remediate, and/or clean up the Property such that it may become compliant. The City shall be further authorized to seek reimbursement for its cost to repair, remediation and/or clean up from all three Respondents. Such cost of repair, remediation, and/or clean up may result in a lien being placed against the Property of all three Respondents in accordance with Chapter 162, *Florida Statutes*.

5. Respondent's failure to abide by the terms and conditions of this Final Order shall also result in the imposition of a statutory daily fine of \$250.00 from November 28, 2023, the date of this violation, until the Property has been determined to have been brought into compliance with the Code of Ordinances of the City of Key Colony Beach, Florida. The City shall also recover the cost of its compliance prosecution should the Respondents fail to satisfy the terms and conditions of this Final Order.


6. A certified copy of this Order may be recorded in the Public Records of Monroe County, Florida, and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the Respondents and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. A certified copy of an Order Imposing Fine may be recorded in the Public Records of Monroe County, Florida, and once recorded shall constitute a lien against the property upon which the violation exists and upon any other real or personal property

owned by the Respondents. Any such recording and subsequent lien will be satisfied by the subsequent filing of a Compliance Order.

**PURSUANT TO SECTION 162.011, FLORIDA STATUTES, AN APPEAL OF THIS FINAL ORDER MAY BE FILED IN THE CIRCUIT COURT IN MONROE COUNTY, FLORIDA, WITHIN THIRTY DAYS OF ITS EXECUTION.**

**DONE and ORDERED** this 22<sup>nd</sup> day of January, 2024.

  
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John G. Van Laningham, Special Magistrate

ATTEST:  
  
\_\_\_\_\_  
City Clerk  
City of Key Colony Beach

STATE OF FLORIDA )  
 ) ss.  
COUNTY OF )

I hereby certify that on this day, before me an officer duly qualified to take acknowledgements, personally appeared Silvia Gransee City Clerk, of the City of Key Colony Beach, to me known to be the person described in and. who executed the foregoing instrument and acknowledged before me that she executed the same. Witness my hand and official seal in the County and State as aforesaid this date 1/22/2024.

  
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Notary Public, State of Florida



## CERTIFICATE OF SERVICE

**\*Copies furnished via FIRST-CLASS MAIL and EMAIL to:**

### SERVICE LIST

Matthew O. Hutchinson, Esq.  
Hershoff, Lupino & Yagel, LLP  
88539 Overseas Highway  
Tavernier, Florida 33070  
Tel: (305) 852-8440  
Email: mhutchinson@hlylaw.com  
Counsel for Respondent, Jodi F. Cox

John Campbell, Esq.  
Campbell & Malafy  
10887 Overseas Highway  
Suite 3201  
Marathon, FL 33050  
Tel: (305) 743-2492  
Email:  
campbelllaw@mac.com  
jody@cmlawfl.com  
Counsel for Respondents,  
Kari Ann Tremblay  
And Ian Casperson

Christopher Corso  
PO Box 510778  
Key Colony Beach FL 33051  
Respondent, Christopher Corso

DATE: 1-23-2024