

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

CITY OF KEY COLONY BEACH, FLORIDA,

Petitioner,

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v.

RICHARD HARPER,

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

Respondent.

FINAL ORDER IMPOSING FINE

IN RE: 680 11th Street, Key Colony Beach, Florida 33051

MAILING ADDRESS: PO Box 510193, Key Colony Beach, Florida 33051

ACCOUNT # AND PROPERTY ID: 1082317

VIOLATIONS: (1) Unlawful Construction Activities Without the Issuance of a Valid Building Permit under Section 6-6, Code of Ordinances of the City of Key Colony Beach, Florida; (2) Failure to complete new construction; required performance and permit expiration under Section 6-7, Code of Ordinances of the City of Key Colony Beach, Florida; (3) Unlawful continuance of work after Notice of Violation/Stop Work Order under Section 101-98, Code of Ordinances of the City of Key Colony Beach, Florida.

The Code Enforcement Special Magistrate for the City of Key Colony Beach, Florida, having before it the above-referenced Code Violation, Unlawful Construction Activities Without the Issuance of a Valid Building Permit, (*Building Permit, Chapter 6-6*), and having heard the supplemental argument and testimony under oath at the public Violation Hearing held on October 11, 2023, in reference to the allegation of non-compliance with Paragraph 14 of the Code Enforcement Board's Final Order dated May 12, 2023 and recorded on March 10, 2023 in Monroe County Official Records Document # 2377072, Book 3175, Page 1882, and based upon this evidence, the Special Magistrate now issues the following **FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER.**

FINDINGS OF FACT

Respondent, RICHARD HARPER, is the title owner of real property located at 680 11th Street, Key Colony Beach, Florida 33051 (the “Property”). The City commenced code enforcement proceedings against Respondent at a public code enforcement violation hearing held on May 11, 2022 for code violations, including the failure to complete work under Permit No. 11261, within fifteen (15) months of the start of construction in violation of Section 6-6(d) of the Code of Ordinances of the City of Key Colony Beach, Florida. The City’s Code Enforcement Board held a full evidentiary hearing and later entered its Final Order on May 12, 2023.

A public code enforcement compliance hearing was held on October 11, 2023, to determine whether Respondent had complied with the mandatory terms and conditions of Paragraph 14 of the Code Enforcement Board’s Final Order dated May 12, 2022, which states in relevant part, as follows:

14. Starting May 11, 2022, Respondent shall be assessed a daily fine of twenty-five (\$25.00) per day for each day that work under Permit No. 11261 and the Continuation of Construction Permit remains incomplete. Any fines that may accrue pursuant to the terms of this paragraph shall be waived in the event that Respondent has completed all work under Permit No. 11261 and the Continuation of Construction Permit on or before December 30, 2022.

Appearing on behalf of the City of Key Colony Beach, Florida, was Assistant City Attorney, Ryan M. Benninger, Esquire of the firm, Vernis & Bowling of the Florida Keys, P.A., as well as Code Enforcement Officer, Barry Goldman. Respondent appeared in person with his counsel, Andrew M. Tobin, Esquire, of the Law Offices of Andrew M. Tobin.

During the City’s opening statement, Respondent’s counsel requested the Special

Magistrate take judicial notice of the Monroe County Circuit Clerk’s docket involving a first-tier appeal filed by his client in the matter captioned: *Richard Harper v. City of Key Colony Beach, Florida*, at Monroe County Circuit Court Case No. 2022-AP-01-M. The Special Magistrate advised that the Court would take the Respondent’s request under advisement.

The City’s Building Official, Lenny Leggett (“Leggett”), testified that he had the opportunity to conduct an physical, on-site “walk-around” inspection of all work alleged to have been completed at the Respondent’s Property under the Continuation of Construction Permit on December 29, 2022. He repeatedly stated that Respondent’s work remained incomplete because there were multiple unfinished elements around the Property. Leggett noted that he verbally advised the Respondent, who was also present for the inspection, that the City’s Building Department would not be issuing either a certificate of completion or certificate of occupancy for the Property as requested. Leggett reasoned that his decision was final because work remained to be completed under Permit No. 11261 and the subsequent issued Continuation of Construction Permit. Leggett said that he believed that Respondent had violated the mandatory terms and conditions of the Code Enforcement Board’s Final Order because work was determined incomplete at the Property after the December 30, 2022 deadline. Leggett concluded that the City’s Building Department determined that Respondent’s continuation of construction permit had expired and was invalid after December 30, 2022.

Leggett indicated that a certificate of occupancy was absolutely necessary. Furthermore, he noted that a Stop Work Order would be issued, and, pending further code enforcement proceedings, any work claimed not subject to the original permit would require a separate and distinct permit. Leggett further indicated

that all work, other than property cleanup, was impermissible. Leggett then later referred the matter to the City's Code Enforcement Department for additional inquiry and investigation. He also testified that he later memorialized the findings of his December 29, 2022 Inspection in correspondence to Respondent dated February 7, 2023. Leggett's February 7, 2023 letter was the focus of Respondent's counsel's cross-examination. The letter was later admitted into evidence at the hearing by agreement of the parties.

Barry Goldman testified that the City later initiated code compliance proceedings against the Respondent's Property for two reasons. First, Goldman said that after consultation with the City's Building Official, it had been determined that Respondent failed to comply with mandatory terms and conditions of Paragraph 14 of the Code Enforcement Board's Final Order entered on May 12, 2022.

Next, Goldman explained that the City was also prepared to present evidence that Respondent was continuing to work without a valid building permit and also by doing so, had violated a Stop Work Order posted by the City to Respondent's Property in January of 2023.

Goldman explained the City had received multiple complaints by Respondent's neighbors that construction activities were continuing to take place at the Property after the expiration of Respondent's permit on December 30, 2022. Goldman noted that he personally investigated the matter after the expiration of the continuation of construction permit in December of 2022 and observed that the Respondent himself to be using table saws on the second-floor balcony of the Property. Goldman also noted that, after posting the Stop Work Order to Respondent's Property, he spoke with an unknown male individual who identified himself to be helping the Respondent with ongoing construction projects at the Property.

Goldman also stated that he conducted a general public social media search of Respondent's Facebook profile and obtained a post containing a written narrative setting forth a description of various construction work completed by the Respondent at the Property through the month of February 2023. Goldman emphasized that Respondent's Facebook post contained various photographs depicting interior work completed specifically in the area of Respondent's kitchen. He clarified that he consulted with Leggett concerning the Facebook post only to learn that Leggett never observed the interior items depicted in Respondent's photographs when he inspected the Property during the site visit on December 29, 2022. Goldman opined that the photographs were evidence that Respondent continued to violate the City's Code of Ordinances by unlawfully performing construction activities without a valid building permit issued by the City's Building Department, and more importantly, after the Stop Work Order had been posted.

Barbara Cisna appeared remotely by Zoom and testified that her family owned real property located at 690 11th Street, which is located immediately next-door to Respondent's Property. Cisna stated that she often heard construction noise that emanated from Respondent's Property after December 30, 2022. Cisna noted that she heard the noise during the evening hours. Cisna said that Respondent's Property constituted an eyesore and that she and her family desired Respondent to complete the work to finish the Property.

After the City closed its case-in-chief, Respondent and his counsel elected to rest, standing on their cross-examination of the City's witnesses, including Leggett and Goldman. The parties made their respective closing arguments. The Special Magistrate then directed the parties to prepare and submit proposed Findings of Fact, Conclusions of Law, and Final

Orders on or before November 17, 2023.

The Special Magistrate now finds that Respondent has failed to comply with the mandatory terms and conditions of Paragraph 14 of the Code Enforcement Board Final Order dated May 12, 2023, because work remains to be completed at the Property as contemplated by Permit No. 11261. In accordance with the plain language of Paragraph 14 of the Code Enforcement Board Final Order dated May 12, 2023, Respondent shall be subject to the imposition of a daily fine of twenty-five (\$25.00) dollars per day starting on May 11, 2022, through and until such time that work under Permit No. 11261 is determined complete by the City's Building Department. Additionally, the Special Magistrate finds that Respondent's Permit No. 11261 and the Continuation of Construction Permit expired on December 30, 2022.

Moreover, the Special Magistrate also finds that Respondent violated the Stop Work Order posted to the Property by the City in January of 2023, and has otherwise unlawfully performed construction activities at the Property without the issuance of a valid building permit by the City after December 30, 2022.

CONCLUSIONS OF LAW

The findings of fact above result in violations of: (1) Section 6-7, Code of Ordinances of the City of Key Colony Beach, Florida, based on Respondent's failure to comply with the mandatory terms and conditions of Paragraph 14 of the Code Enforcement Board Final Order dated May 12, 2023; (2) Section 6-6, Code of Ordinances of the City of Key Colony Beach, Florida, based on Respondent's continued, unlawful construction activities at the Property without the issuance of a validly issued building permit; and (3) Section 101-98, Code of Ordinances of the City of Key Colony Beach, Florida, based on

Respondent's failure to comply with the mandatory terms and conditions of the City's Stop Work Order posted to the Property in the month of January 2023.

Pursuant to Section 162.09, *Florida Statutes*, Section 1-10, Code of Ordinances of the City of Key Colony Beach, and the mandatory terms and conditions of compliance set forth in Paragraph 14 of the Code Enforcement Board Final Order dated May 12, 2023 referenced herein and above, Respondent's continuing violation of Section 6-7, Code of Ordinances of the City of Key Colony Beach, Florida, for failure to complete work under Permit No. 11261 and the Continuation of Construction Permit shall result in the imposition of a daily fine of \$25.00 per day, including the City's cost of prosecution, to be applied retroactively from May 12, 2023, through and until such time as the Property has been determined to be in compliance with the applicable Code of Ordinances of the City of Key Colony Beach, Florida.

Pursuant to Section 162.09, *Florida Statutes* and Section 1-10, Code of Ordinances of the City of Key Colony Beach, Respondent's continuing violation of Section 6-6, Code of Ordinances of the City of Key Colony Beach, Florida, for unlawfully performing construction activities without a valid building permit being issued by the City, shall result in the imposition of a daily fine of \$250.00 per day, including the City's cost of prosecution, for a compromised violation period of 38 days from January 1, 2023 through February 8, 2023, along with the City's cost of prosecution in the amount of \$338.00, for a total fine of **\$9,338.00**.

Pursuant to Section 162.09, *Florida Statutes* and Section 1-10, Code of Ordinances of the City of Key Colony Beach, Respondent's continuing violation of Section 101-98, Code of Ordinances of the City of Key Colony Beach, Florida, for unlawfully performing construction activities after a Stop Work Order was posted to the Property by the City, shall result in the

imposition of a daily fine of \$250.00 per day, including the City's cost of prosecution, for a compromised violation period of 38 days from January 1, 2023 through February 8, 2023, along with the City's cost of prosecution in the amount of \$338.00, for a total fine of **\$9,338.00**.

A fine imposed pursuant to Chapter 162.09, *Florida Statutes*, shall continue to accrue until the Respondent comes into compliance or until judgment is rendered in a suit filed in accordance with this chapter, whichever occurs first. A lien arising from a fine imposed pursuant to Chapter 162.09, *Florida Statutes*, runs in favor of the City of Key Colony Beach, Florida, and the City may execute a satisfaction or release of lien entered pursuant to this chapter.

ORDER

1. Based on the foregoing Findings of Fact and Conclusions of Law, the Special Magistrate now finds that Respondent has failed to comply with the terms and conditions of Paragraph 14 of the Code Enforcement Board Final Order dated May 12, 2023, and is therefore, subject to the imposition of fines.

2. The Special Magistrate now orders the Respondent to pay to the City of Key Colony Beach, Florida, a daily fine of \$25.00 per day, as set forth in Paragraph 14 of the Code Enforcement Board Final Order dated May 12, 2023, said fine shall apply retroactively from May 11, 2022, through and until such time as the Property has been determined to be in compliance with the Code of Ordinances of the City of Key Colony Beach, Florida. The City shall also have the right to recover its cost of prosecution of this matter in the amount of \$338.00. A fine imposed pursuant to Chapter 162.09, *Florida Statutes*, shall continue to accrue until the Respondent comes into compliance or until judgment is rendered in a suit

filed in accordance with this chapter, whichever occurs first. A lien arising from a fine imposed pursuant to Chapter 162.09, *Florida Statutes*, runs in favor of the City of Key Colony Beach, Florida, and the City may execute a satisfaction or release of lien entered pursuant to this chapter.

3. The Special Magistrate also finds that Respondent has violated Section 6-6 of the Code of Ordinances of the City of Key Colony Beach, Florida, when Respondent unlawfully performed construction activities without a valid building permit being issued by the City, and is therefore, subject to the imposition of a daily fine of \$250.00 per day, including the City's cost of prosecution, for a compromised violation period of 38 days from January 1, 2023 through February 8, 2023, along with the City's cost of prosecution in the amount of \$338.00, for a total fine of **\$9,338.00**.

4. The Special Magistrate also finds that Respondent has violated Section 101-98 of the Code of Ordinances of the City of Key Colony Beach, Florida, when Respondent unlawfully performed construction activities after a Stop Work Order had been posted to the Property by the City, and is therefore, subject to the imposition of a daily fine of \$250.00 per day, including the City's cost of prosecution, for a compromised violation period of 38 days from January 1, 2023 through February 8, 2023, along with the City's cost of prosecution in the amount of \$338.00, for a total fine of **\$9,338.00**.

5. 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.

6. Respondent's Permit No 11261 and the Continuation of Construction Permit expired on December 30, 2022, in accordance with the terms and conditions of the Code Enforcement Board's Final Order dated May 12, 2022. Respondent must stop all unlawful construction activities presently taking place at the Property. Respondent is further prohibited from residing at the Property until such time as a certificate of occupancy has been issued by the City. Respondent shall retain a Florida licensed general contractor and have this licensed general contractor schedule a meeting with the City's Building Department to review the original building plans supporting Permit No. 11261, the contents of the Building Official's letter dated February 7, 2023, and be further present for an onsite inspection of the Property with the City's Building Officials in order to catalog all work performed after December 30, 2022, and all work remaining to be performed pursuant to the approved building plans as identified by the February 7, 2023 correspondence.

7. For all work already performed after December 30, 2022, which is determined to not be performed to Federal, State, or local building code standards, Respondent shall have a licensed general contractor submit an application for a demolition permit to conduct a complete reversal of all work performed which is not built to code, which demolition permit will be founded on and comply with all applicable law. Once approved, and after said demolition permit has been issued, the licensed general contractor will reverse all aforementioned work which was performed without a permit and not performed according to applicable code. Respondent may then have a

licensed general contractor submit a new application with the City delineating specific and distinct work to be completed. Said new permit application will be duly evaluated for compliance with all applicable laws, and only issues if after review, same satisfied all requirements of all applicable laws and all after-the-fact fees are hereby paid.

8. Alternatively, if Respondent believes the work already performed meets all Federal, State, and local building code standards, he shall have a licensed general contractor submit a report reviewing and further analyzing all work already performed to the City's Building Department. The City's Building Department will then review and further determine whether the work performed by the Respondent to date meets all Federal, State, and local building code requirements and standards. If the work performed is compliant with all applicable federal, state, and local building code requirements and standards, Respondent's licensed general contractor may apply for an "after-the-fact" building permit with the City's Building Department, which will be duly evaluated for compliance with all applicable laws, requirements, and standards, and only issued thereafter if same are and all after-the-fact fees have been paid.

9. Furthermore, all work identified as still to be completed in conformity with the approved building plans and necessary to obtain a certificate of occupancy from the City's Building Department shall require a new and distinct building permit issued by the City's Building Department. Said application for new building permit will be duly evaluated for compliance with all applicable laws, regulations, and standards, and only issued thereafter all applicable requirement have been met and all permitting fees have been paid.

1. Respondent shall have thirty (30) days from the date of this Notice of Violation/Corrective Action to comply with subparagraphs (6-9) of this Final Order. If Respondent fails to bring the Property back into compliance with the Code of Ordinances of the City of Key


Colony Beach, Florida, 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 Respondent’s Property. Such cost of repair, remediation, and/or clean up may result in a lien being placed against the Property in accordance with Chapter 162, *Florida Statutes*. This corrective action is in addition to the fines assessed for Respondent’s violations of the Code of Ordinances of the City of Key Colony Beach, Florida, as set forth above.

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 1st day of December, 2023.



John G. Van Laningham, Special Magistrate

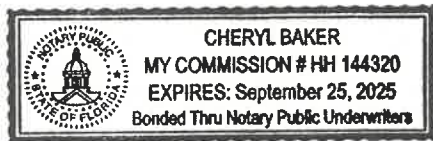
ATTEST:


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 Branse, 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 December 4, 2023.


Notary Public, State of Florida



CERTIFICATE OF SERVICE

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

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Date: 12-04-2023