

DOAH HEARING MINUTES
CITY OF KEY COLONY BEACH - CODE COMPLIANCE HEARING
Wednesday, November 13, 2024 - 9:30 a.m.
Located at the City Hall Auditorium 'Marble Hall',
600 W. Ocean Drive, Key Colony Beach
& Virtually via Zoom

A. Call to Order: Judge Van Laningham called the Code Compliance Hearing to order at 9:30 Am and advised on Florida Statutes as written in Agenda Items B and C. **Present:** Judge van Laningham, Assistant City Attorney Hunter O'Connor, Assistant City Attorney Scott Black, Administrative Assistant Tammie Anderson, City Clerk Silvia Roussin, Attorney Matthew Hutchinson on behalf of the Respondent Jody Cox, Code Officer William Dominicak, Building Official Tony Loreno.

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

- i. December 13th, 2023

Judge Van Laningham asked for objections on the minutes. There were none, and Judge van Laningham approved the minutes as written.

E. Swearing in of Witnesses to Testify: Judge van Laningham administered the Oath of Witness to all planning to testify.

F. Mitigation Orders Issued/Summary: None.

G. HEARING CASES:

1. **Property Address:** 908 W. Ocean Drive, Key Colony Beach
Owner: Jody Cox

Violation: Installing a fence without a valid permit, City Code 6-6, Section C.

Judge Van Laningham commenced the proceedings. Attorney Hutchinson contested the allegations on behalf of the Respondent, Jody Cox.

Assistant City Attorney O'Connor gave a brief opening statement, outlining the background of the alleged violation, the timeline of events, and requesting that Cox be found in violation of city code. Assistant City Attorney O'Connor also asked for a compliance date and an assessment of fees.

Attorney Hutchinson had no opening statement.

The City called their first witness, Mr. William Dominicak. William Dominicak testified about his employment as a Code Officer for the City of Key Colony Beach, the evidence presented, and the timeline of events.

Attorney Hutchinson conducted a cross-examination of Code Officer Dominicak.

William Dominicak testified about the location of the disputed structure, access points to the property, and the application for an after-the-fact permit.

Assistant City Attorney O'Connor provided a redirect, and William Dominicak offered additional testimony regarding the disputed structure and confirming the definition of a fence under the building code.

Attorney Hutchinson contested the definition of a fence according to the building code.

There was no further testimony from William Dominicak.

Assistant City Attorney O'Connor called Building Official Tony Loreno to testify.

Building Official Loreno stated his name for the record and testified to his involvement in the case. Building Official Loreno testified that a permit is required for the construction of a fence and that former Building Official Ed Borysiewicz denied the After-The-Fact permit. Building Official Loreno provided further testimony regarding the permit application, discussing the construction and location of the shadow box fence, as well as the denial of the permit with no issued appeal.

Attorney Hutchinson provided cross-examination, and Building Official Loreno testified to City code regulations, required neighbor approval, and the easement prescribed in the deed.

Assistant City Attorney O'Connor had no redirect.

There were no further witnesses, and Assistant City Attorney O'Connor asked for exhibits to be moved into the record. There were no objections, and Judge Van Laningham received Exhibits 1 through 17 into the evidence.

Attorney Hutchinson had no evidence to be presented.

Assistant City Attorney O'Connor delivered his closing argument and addressed the expressed easement rights outlined in the deed, the timeline for appealing the city's denial of a permit, and the challenge to the city's denial to be moot.

Attorney Hutchinson delivered his closing argument, questioned the need for permits and definitions regarding the fence, and provided definitions of a fence from various dictionaries. He also discussed Florida Statutes related to fences and relevant case law on trespassing rulings that involve fences not enclosing an entire property, arguing that the fence should not be classified as a fence.

Judge Van Laningham confirmed Attorney Hutchinson's position that the structure does not require a permit because it is not actually a fence and the city's opposition. Attorney Hutchinson provided further testimony regarding the intent of the structure, stating that there are no ingress or egress issues.

Assistant City Attorney O'Connor responded for the city, determining the structure to be a fence based on the interpretation of the code, as well as the permit application quoting the proposed construction being described as a fence per Exhibit 3.

Assistant City Attorney O'Connor testified about the lack of a clear definition in the city's code, focusing instead on the city's interpretation of it. Assistant City Attorney O'Connor affirmed the request for a compliance date and for fines.

Attorney Hutchinson argued that 30 days of compliance should be considered acceptable and requested consideration of lesser fines due to mitigating factors.

Judge Van Laningham confirmed that both attorneys are to provide memoranda within a week and will reserve ruling until further written input from the parties has been received. Judge Van Laningham also confirmed the deadline for written materials or code sections as November 20th, and no final order will be issued until those are reviewed. Both attorneys agreed, and there was nothing further to discuss.

Judge Van Laningham concluded the hearing.

The Hearing concluded at 10:06 AM.

Respectfully submitted,

Silvia Roussin

City Clerk