



**CODE COMPLIANCE
SPECIAL MAGISTRATE HEARING**

Marathon Council Chambers
9805 Overseas Highway, Marathon
Thursday, May 20, 2021 at 2:00 P.M.

Minutes

A. CALL TO ORDER

The Code Compliance Special Magistrate Hearing of May 20, 2021 was called to Order by Special Magistrate, James (Jack) Bridges at 2:00 P.M., at the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida.

Staff Present:

City Attorney Steven Williams
Code Admin. Asst./SMRC Maria Thorley
Code Compliance Officer Erin Dafoe
Code Compliance Officer Don Law

Members of the public present.

B. PLEDGE OF ALLEGIANCE - The Pledge of Allegiance was recited.

C. ADDITIONS/DELETIONS/CORRECTIONS/ANNOUNCEMENTS

- The following case was continued: 3. C-18-407 (C2018-0408)

D. APPROVAL OF MINUTES

- Special Magistrate Bridges approved the minutes of April 15, 2021, hearing.

E. SWEARING IN OF WITNESSES TO TESTIFY

- Special Magistrate Bridges called for witnesses to be sworn in and administered the Oath.

F. NOTICES

- Notices were read into the record.
- There were no Ex-Parte Communications.

G. CASES FOR PUBLIC HEARING:

CODE OFFICER, ERIN DAFOE

4. C-18-356 (C2018-0356) (New Case)

Jose Francisco Gonzalez-Heres Revocable Trust 4/27/2016
11339 5th Ave., Marathon, FL (RE#00344810-000000)

Based on the evidence presented at the hearing, the Respondent(s) has violated §6-91(a) (b) (1) (2) (c) (3) (2) (5) (9) (11) (d) (f) (g) of the City of Marathon Code, as set forth in the Notice of Violation/Notice of Hearing served upon the Respondent(s).

On September 21, 2018, the structure located on the property sustained damage which may be substantial; therefore, the Building Official determined that the conditions of the property to be in violation of the stated code.

Exhibits A through D were entered and accepted into evidence by Special Magistrate Bridges.

City Attorney Steve William approached the bench and handed a Power of Attorney to Special Magistrate Bridges on behalf of Paul Camacho who is representing the Respondent who could not be at the hearing and asked to consider such request.

Attorney Williams had concerns with the Power of Attorney; however, Special Magistrate Bridges allowed the request.

The Respondent was not present at the hearing but was properly noticed of the hearing by certified mail and afforded the opportunity to appear and speak. Paul Camacho spoke on behalf of the respondent and admitted to said violation and stated that due to financial hardship he has not been able to comply with the city and would like to have some time to finish the work.

RECOMMENDATION(S): The Special Magistrate heard the testimony, and a Findings of Fact, Conclusion of Law and Order was entered finding the property in violation of the stated code and Ordered Respondent(s) to apply for and obtain an after-the-fact building permits for all repairs necessary, including any other structural, mechanical, plumbing and electrical; to acquire an engineer letter stating that the structure is safe for its intended use per Florida Building Code, including a completed substantial improvement packet showing that necessary repairs are less than 50% of the value of the structure, within ninety (90) days starting from the date of May 21, 2021; to pay an Administrative Fee in the amount of Three Hundred Dollars (\$300.00) within thirty (30) days starting from the date of May 21, 2021. In the event the violation(s) is/are not corrected by the date set for compliance, August 19, 2021, Respondent(s) shall pay a fine in the amount of One Hundred Dollars (\$100.00) per day, which shall accrue for each day the violation(s) continues to exist past the compliance date set forth herein. This fine is calculated by taking into consideration: the gravity of the violation; the steps taken by the Respondent to correct the violation; and any previous violations, pursuant to Chapter 162.09 (2) (b) (1) - (3), F.S.

CODE OFFICER, ERIN DAFOE

5. C-19-128 (C2019-0129) (New Case)

Robert Smith and Victoria Fairbrother-Smith
8016 Tuna Dr, Marathon, FL (RE# 00330660-000000)

Based on the evidence presented at the hearing, the Respondent(s) has violated §6-52 (a) (1) b. of the City of Marathon Code, as set forth in the Notice of Violation/Notice of Hearing served upon the Respondent(s).

An initial inspection June 28, 2019, and July 2, 2019, showed the replacement of windows and concrete work without the benefit of a permit.

Exhibits A through D were entered and accepted into evidence by Special Magistrate Bridges.

The Respondent(s) was/were present at the hearing, and admitted to the violation, was/were properly noticed of the hearing by certified mail and afforded the opportunity to appear and speak.

RECOMMENDATION(S): The Special Magistrate heard the testimony, and a Findings of Fact, Conclusion of Law and Order was entered finding the property in violation of the stated code and Ordered Respondent(s) to apply for and obtain an after-the-fact building permit for the replacement of windows, concrete work and any other structural, mechanical and plumbing work within thirty (30) days starting from the date of May 21, 2021; to pay an Administrative Fee in the amount of Three Hundred Dollars (\$300.00) within thirty (30) days starting from the date of May 21, 2021. In the event the violation(s) is/are not

corrected by the date set for compliance, June 20, 2021, Respondent(s) shall pay a fine in the amount of One Hundred Dollars (\$100.00) per day, which shall accrue for each day the violation(s) continues to exist past the compliance date set forth herein. This fine is calculated by taking into consideration: the gravity of the violation; the steps taken by the Respondent to correct the violation; and any previous violations, pursuant to Chapter 162.09 (2) (b) (1) - (3), F.S.

CODE OFFICER, ERIN DAFOE

2. C-20-19 (C2020-0019) (New Case)

Diane Tyma, Estate of Thomas Tyma

101 W 63rd St Ocean, Marathon, FL (RE# 00338730-000900)

Based on the evidence presented at the hearing, the Respondent(s) has violated §6-52 (a) (1) b. of the City of Marathon Code, as set forth in the Notice of Violation/Notice of Hearing served upon the Respondent(s).

The Respondent(s) was/were present at the hearing and was/were properly noticed of the hearing by certified mail and afforded the opportunity to appear and speak. Attorney Jim Dorl represented the Respondent(s) in this case.

Exhibits A and B were entered and accepted into evidence by Special Magistrate Bridges.

Exhibit C was admitted into evidence for the purpose of establishing the Notice of Violation.

Attorney Dorl objected to Exhibit D photos being admitted into evidence, as he believes they are not part of the record and would require foundational witness.

Attorney Williams cross-examined Code Officer Erin Dafoe to address Attorney Dorl's concerns for the purpose of establishing a foundational witness pertaining to Exhibit D (Pg. 1 of 3) photos (alterations made to the garage without permits).

Attorney Dorl who represents the Respondent in this case, cross-examined Code Officer Dafoe and questioned Exhibit D photos, as to who took the photos dated February 28, 2020.

Attorney Williams objected to the question, as photos were taken on multiple dates.

Attorney Dorl stated that photos taken before and after February 28, 2020, are irrelevant to this case.

Attorney Williams explained to Special Magistrate Bridges, that photos taken after February 28, 2020, exists for the purpose of substantiating the condition of the property, and if it is still not compliant.

Special Magistrate Bridges stated that any photos before and on February 28, 2020, would be considered relevant to the case and sustained the objection to photos taken after February 28, 2020, which will only be considered for the purpose of substantiating that the violation was cured or not.

Attorney Dorl questioned Ms. Dafoe as to the Notice of Violation that was signed by previous Code Officer Yetter, relating to the inspection of the property, as he believes an inspection of the property was never performed, but rather a drive by photo.

Code Officer Dafoe stated the photos were taken from the right-of-way and she explained that Code Officers are not allowed on private properties without the owner's permission.

Exhibit D photos pertaining to February 28, 2020, were entered and accepted into evidence by Special Magistrate Bridges.

Attorney Williams cross-examined Code Officer Dafoe regarding photos of the partition of the garage in question and from where the photos were taken, as well as what the property owner needs to do to bring the property into compliance.

Ms. Dafoe stated the photos were taken from the right-of-way in front of the garage and mentioned that the property owner needs to apply for and obtain an after-the-fact permit for the unpermitted work.

Attorney Dorl objected to the question asked by Atty Williams to Ms. Dafoe, regarding the email sent between the property owner and Mr. Dorl, as it was not part of the exhibits. Special Magistrate Bridges overruled the objection as this is a party admission.

The City rested its case.

Attorney Dorl reiterated the question of where the photos were taken from, and if the code officer set foot on the property to do the inspection.

Special Magistrate questioned if permits were obtained for the partition of the garage.

Ms. Dafoe stated no permits were obtained for said work.

Attorney Dorl called Randy Scott Beasley to the stand and asked if an inspection of the garage took place on February 28, 2020. Mr. Beasley mentioned the inspector was talking to Ms. Tyma from the driveway and no inspection was performed of the garage on said date.

In closing statement: Attorney Williams stated there was documented evidence that a garage conversion exists at the property. Proper notices were given to the property owner as to the existence of a partition wall on the garage, and there was no disagreement presented by the property owner of the violation not occurring. Therefore, if no permit was obtained for such work, a violation is present.

In closing statement: Attorney Dorl questioned the Notice of Violation that was signed by former Code Officer Yetter and in no way meant to imply that Ms. Dafoe was not testifying truthfully; However, attorney Dorl stated that what the city is saying, is that they have the right to bring a case to hearing just by simply driving by your house and taking a picture from the road, and he believes that simply taking a picture without further inspection proves this case by a preponderance of the evidence.

Special Magistrate Bridges stated that based on the testimony presented, he believes that a violation has been committed.

RECOMMENDATION(S): The Special Magistrate heard the testimony, and a Findings of Fact, Conclusion of Law and Order was entered finding the property in violation of the stated code and Ordered Respondent(s) to apply for and obtain an after-the-fact building permit with final inspections for the partitioned wall in the garage, including any other structural, mechanical, plumbing and electrical work within sixty (60) days starting from the date of May 21, 2021; to pay an Administrative Fee in the amount of Three Hundred Dollars (\$300.00) within thirty (30) days starting from the date of May 21, 2021. In the event the violation(s) is/are not corrected by the date set for compliance, July 20, 2021, Respondent(s) shall pay a fine in the amount of One Hundred Dollars (\$100.00) per day, which shall accrue for each day the violation(s) continues to exist past the compliance date set forth herein. This fine is calculated by taking into consideration: the gravity of the violation; the steps taken by the Respondent to correct the violation; and any previous violations, pursuant to Chapter 162.09 (2) (b) (1) - (3), F.S.

CODE OFFICER, ERIN DAFOE

1. C-20-65 (C2020-0067) (New Case)
Keilan L and Anna M Davis
1053 76th St Ocean, Marathon, FL 33050 (RE #00342961-001200)

Based on the evidence presented at the hearing, the Respondent(s) has violated §6-91 of the City of Marathon Code, as set forth in the Notice of Violation/Notice of Hearing served upon the Respondent(s).

The structure located on the property sustained damage which may be substantial. As of May 12, 2020, the Building Official determined that the conditions of the property to be in violation of the stated code.

Exhibits A through D were entered and accepted into evidence by Special Magistrate Bridges.

The Respondent(s) was/were not present at the hearing but was/were properly noticed of the hearing by certified mail and afforded the opportunity to appear and speak.

RECOMMENDATION(S): The Special Magistrate heard the testimony, and a Findings of Fact, Conclusion of Law and Order was entered finding the property in violation of the stated code and Ordered Respondent(s) to apply for and obtain building permits for all repairs necessary to make the structure safe for its intended use as designed by a Florida Licensed Architect or Engineer, including a completed substantial improvement packet showing that necessary repairs are less than 50% of the value of the structure; or apply for and obtain building permits to demolish the structure, within thirty (30) days and cause the actual repairs or demolition to occur within ninety (90) days of receiving all necessary permits with final inspections closed. It is hereby ordered that the violations are a serious threat to public health, safety and welfare authorizing the City Manager or designee to make necessary corrections to bring the Property into compliance. Respondent shall pay an Administrative Fee in the amount of Three Hundred Dollars (\$300.00) within thirty (30) days, starting from the date of May 21, 2021. In the event the violation(s) is/are not corrected by the date set for compliance, August 19, 2021, Respondent(s) shall pay a fine in the amount of One Hundred Dollars (\$100.00) per day, which shall accrue for each day the violation(s) continues to exist past the compliance date set forth herein. This fine is calculated by taking into consideration: the gravity of the violation; the steps taken by the Respondent to correct the violation; and any previous violations, pursuant to Chapter 162.09 (2) (b) (1) - (3), F.S

H. OLD BUSINESS - None

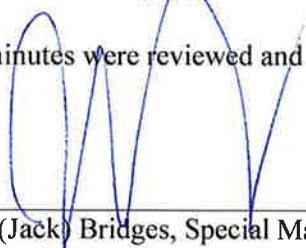
I. NEW BUSINESS - None

J. DISCUSSION ITEMS - None

K. ADJOURNMENT - With no further business to come before the Special Magistrate, the meeting was adjourned at 3:08P.M.

The above represents a summary of the Code Compliance Hearing held May 20, 2021. This is not a verbatim record. A recorded disc is available upon request.

These minutes were reviewed and approved by James (Jack) Bridges, Special Magistrate.



James (Jack) Bridges, Special Magistrate



Date