

1. Requested Motion:

Meeting Date: Aug. 19, 2013

Motion to approve/deny a Lien Reduction Request on a lien against the property located at 5545 Avenida Pescadora, Code Enforcement Case #2006-43F in the amount of _____. Said approval is conditioned upon full payment being received by the Town within thirty (30) days of approval. Failure to pay in full within thirty (30) days will cause the full amount of the lien to remain in force and no future lien reductions may be considered.

Why the action is necessary:

To act upon a Lien Reduction Request as is provided within Ordinance 12-05.

What the action accomplishes:

Clears the lien against the property and enables sale of the property.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background: See the Town Manager's report attached hereto. That report includes six exhibits.

6. Alternative Action: Either totally deny the request or decide upon a greater or lesser reduction amount.

7. Management Recommendations:

Approve the Reduction Request authorizing a reduction of no greater than 50% of the lien amount (\$10,500), add the \$285 prosecutorial fee, total of \$10,785, and require payment within thirty (30) days. Should payment not be received within 30 days, the lien total of \$21,000 plus prosecutorial fee remains in force and no future lien reduction requests may be considered.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk

9. Council Action:

Approved Denied Deferred Other

Town Manager's Report and Recommendations
Request for Code Enforcement Lien Reduction
5545 Avenida Pescadora
Case #2006-43F Lien Totals \$21,285

The owners of the improved property located at 5545 Avenida Pescadora, Paul and Mary Minor, have petitioned the town for consideration of a reduction in the town's valid Code Enforcement lien against that property. The Town Manager has reviewed the record and has determined that based upon the criteria established within town Ordinance 12-05, the property is eligible for consideration of a lien reduction. The Town Manager has further reviewed the Lien Reduction application and weighed the information provided therein against the information within the file for Case #2006-43F. The results of that review are included herein.

- Code Enforcement visited the subject property on May 8, 2006 because concerns that construction work had begun on the structure at the above name property without the property owner having applied for and received a valid building permit. This concern was validated and Code Enforcement began preparation of a Notice of Violation.
- On June 19, 2006 a Notice of Violation document was sent by certified mail to the property owner as registered within the records of the Lee county Property Appraiser's Office. It was mailed to the property owner's official mailing address as recorded with the Property Appraiser.
- On June 19, 2006, a Notice of Violation Document was also posted at the subject property.
- On August 29, 2006 a Notice of Violation was again sent by certified mail to the Property owner as registered within the records of the Lee county Property Appraiser's Office. It was mailed to the property owner's official mailing address as recorded with the Property Appraiser.
- On August 29, 2006 a Notice of Violation was again posted at the subject property.
- A Code Enforcement hearing was held on September 14, 2006 within which Code Enforcement Case on the subject property was considered. An order was entered by the Hearing Examiner that a violation did exist on the subject property and required the property owner to complete actions to abate the violation by a date certain or face the imposition of a fine.
- At another hearing on October 19, 2006, the Hearing Examiner received competent evidence that the violation had not been abated. **He ordered a \$100.00 per day fine for each and every day the violation continued to exist. He further ordered the property owners to pay prosecutorial fees of \$285 in addition to any daily fines.**
- On October 19, 2006, the Hearing Examiner properly recorded a lien with the Lee County Clerk's Office. The recorded document certifies that a copy was sent by US Mail to the property owner. That document contains language advising the property owner of his/her right to file a request for a rehearing of the Hearing Examiner's decision within twenty days. The property owner also had the right to proceed to Circuit Court after any rehearing.
- The property owner did not request a rehearing.
- A building permit application covering work necessary to abate the violation was received on February 22, 2007.
- The building permit was issued on May 17, 2007.

Town Manager's Report and Recommendations
Request for Code Enforcement Lien Reduction
5545 Avenida Pescadora
Case #2006-43F Lien Totals \$21,285

Ordinance 12-05 requires any Lien Reduction request to include various elements of information.

1. A copy of the order imposing a lien upon the property. A copy was provided.
2. A listing of the Code Enforcement Case number. This was provided.
3. The Date upon which the violator/property owner brought the subject property into compliance with the requirements of Town Code. The date of compliance is the date that a building permit was approved, May 17, 2007.
4. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted. The applicants did provide their reasons. However, this reviewer does not believe the reasons as presented to be completely relevant for these reasons.
 - a. Ignorance of the laws/codes is no defense and does not release the violator from responsibility for his/her actions. It is helpful to note that when ordered to cease work, the violators immediately complied. However, four days of work had already been accomplished.
 - b. The applicant claims to have experienced an inability to get his chosen architect in Wisconsin to prepare the plans necessary for permit application and that a different architect had to be retained. Responsibility for managing the professionals that were selected cannot be the responsibility of the Town. In addition, the record does not include any notation that the property owner informed Code Enforcement of such difficulties nor was any petition for additional time submitted.
 - c. The applicant asserts that mailed notices of the impending Code Hearing were not received until after the abatement period had expired because his permanent residence was in the State of Wisconsin. Florida State Statute requires all notices of Code Violations to be mailed to the mailing address register and on file with the county Property Appraiser's Office. All required notice documents were mailed to that address which was at the time of the Code Violations and remains to this day as 5545 Avenida Pescadora, Fort Myers Beach, Florida. A document from the Appraiser's Office demonstrating this is included with documents supporting this report.
 - d. The applicant asserts that he had difficulty finding a Florida architect and then being able to get that architect to get the work done. Again, that responsibility cannot be the Town's. Once again, there is no record in the case file indicating that the property owner ever notified Code Enforcement of those difficulties nor was any petition for additional time ever submitted.
 - e. The applicant asserts that the violation never created any hazards or danger to the public. There is insufficient information to determine if this is an accurate

Town Manager's Report and Recommendations
Request for Code Enforcement Lien Reduction
5545 Avenida Pescadora
Case #2006-43F Lien Totals \$21,285

reflection of the actual situation. Even assuming this assertion to be correct, it is important to note that the property remained in a condition of disrepair and an undesirable visual element within the property's neighborhood.

5. The specific terms upon which the violator/property owner believes a satisfaction of lien should be granted. The applicant has requested to pay only a reduced lien amount of \$1,000 plus the \$285 prosecutorial fee.
6. The reasons, if any compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded. This information is addressed in item 4 above.
7. The amount of the reduction in penalty or fine requested by the violator/property owner. See number 5 above.
8. Information concerning any outstanding mortgages on the property, including the date such mortgages or mortgages was recorded and whether the mortgage or mortgages are currently in default. The applicant attests that there are no outstanding mortgages on the subject property.

Town Manager's Conclusion and Recommendation.

The information as presented above will not be repeated herein. In examining the information provided by any Lien Reduction applicant, it is important to determine if any of the situations or circumstances emanating from the Code Violation causing the imposition of the lien were beyond the control of the violator/property owner. In addition, it is equally important to determine if the violator property owner took actions to utilize all opportunities to mitigate extenuating circumstances.

Based upon the information included within the case file and that submitted by the applicant, there is no evidence that circumstances and situations were beyond their control. Specific actions of the property owner caused the violation to exist, regardless of the claimed ignorance of the law; it was those actions that caused the violation. While it is true that one cannot directly control the responsiveness of architects, engineers, contractors or other professionals a violator/property owner may retain, this still remains their responsibility to manage to some reasonable degree. This situation does warrant some degree of mitigation however.

As to whether the violator/property owner took advantage of all opportunities to mitigate extenuating circumstances, it appears that every such opportunity was neglected. The official mailing address registered with the Property Appraiser remains unchanged to this day. A five month period elapsed between the initial code hearing and the application for a building permit. Here we are six years later and no attempt has been made to pay any amount on the lien or even request a payment option. In essence, the violator/property owner has completely ignored the lien until now.

Town Manager's Report and Recommendations
Request for Code Enforcement Lien Reduction
5545 Avenida Pescadora
Case #2006-43F Lien Totals \$21,285

It is the recommendation of this Town Manager that based upon the information and facts provided throughout this document that the Town Council consider **a mitigation of no greater than fifty percent (50%) of the existing lien amount, \$10,500. In addition, it is also recommended that the prosecutorial fee of \$285 be added to that amount for a total of \$10,785.**

The total amount ultimately decided upon by action of the Town Council must be paid within thirty days of the council's decision or the full amount of the lien will remain in force and no future Lien Reductions may be considered.

Town Manager's Report and Recommendations
Request for Code Enforcement Lien Reduction
5545 Avenida Pescadora
Case #2006-43F Lien Totals \$21,285

Exhibits

- A. Documents comprising the File for Case #2006-43F. 21 pages
- B. The applicant's request for Code Enforcement Lien Reduction. 6 pages
- C. A copy of the Building Permit application file. 3 pages
- D. A copy of a page from the property Appraiser's website illustrating billing information with addresses for the years 2005 to date. 1 page
- E. A copy of a letter from the Town Attorney to the property owner's attorney. 2 pages
- F. A copy of ordinance 12-05. 6 pages

E x A.

INSTR # 2006000456213, Pages 3
Doc Type ORD, Recorded 12/07/2006 at 01:16 PM,
Charlie Green, Lee County Clerk of Circuit Court
Rec. Fee \$27.00
Deputy Clerk VBADKE
#1

PARCEL #: 28-46-24-W3-0020A.0370

THIS SPACE FOR RECORDING

BEFORE THE HEARING EXAMINER OF
LEE COUNTY, FLORIDA IN AND FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA :
Petitioner, :
vs. :
PAUL AND MARY MINOR :
Respondent :

CASE NO.: 2006-43F

CODE ENFORCEMENT ORDER

THIS CASE was first heard by the undersigned Lee County Hearing Examiner at a public hearing on September 14, 2006, after which an Order was entered which found that a violation existed on the subject property and required the Respondent, as the responsible person or entity, to complete certain actions that would abate the violation by a date certain or face the imposition of a specified fine.

On, October 19, 2006, the Hearing Examiner received competent evidence that the violation had not been abated in accord with the above Order, and therefore finds and decides:

1. That the above-noted Order has not been complied with; and
2. That the violation of NO PERMITS still exists on the subject property; and
3. That the Respondent has not paid the prosecution costs in the amount of \$285.00 which are due and owing to the Petitioner per Chapter 162, Florida Statutes.

It is ORDERED that Respondent pay a fine of **\$100.00 per day, beginning on October 19, 2006**, and continuing for each and every day that the aforesaid violation exists and continues on the property located, as reported by the Petitioner, at 5545 Avenida Pescadora, Fort Myers Beach, Florida 33931.

Upon recording in the public records, this Order shall constitute a lien for the fine amount against all real and personal property of Respondent, including but not limited to the property described on the attached exhibit, and subsequent foreclosure of such lien may result in the loss of such property.

Oct 19-31, 2006 =	13 Days
NOV 2006 =	30
Dec 2006 =	31
Jan 2007 =	31
Feb 2007 =	28
March 2007 =	31
April 2007 =	30
May 2007 =	31
June 2007 =	30
July 2007 =	31
Aug 2007 =	31
Sept 2007 =	30
Oct. 2007 =	31
Nov 2007 =	30
Dec. 2007 =	31
Aborted Jan. 3 2008 =	3

Paul + Mary Minor
 442 Days
 44,200

Dr. Minor
 414-649-6144

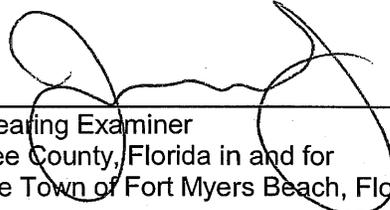
beachlaw
 Shenko.net

463-3100

Janice
 Bill Shenko
 126 Mango St.
 Case 2006-003F
 Gerry +
 Mary Ann
 Menkshahi

The prosecution costs awarded herein may also become a lien against Respondent, upon said recording, pursuant to Chapter 162, Florida Statutes.

DONE AND ORDERED at 1500 Monroe Street, Second Floor, Fort Myers, Lee County, Florida on October 19, 2006.



Hearing Examiner
Lee County, Florida in and for
the Town of Fort Myers Beach, Florida

REHEARING: If the property owner disagrees with the Hearing Examiner's finding herein that the violation has not been properly abated, which has resulted in the imposition of the per day fine, then the property owner has 20 days from the date of this order to request a rehearing. The request must be made in writing to the Lee County Code Enforcement Office and will be scheduled, if possible, on the next regularly scheduled Code Enforcement public hearing docket. Evidence and testimony presented at the hearing will be limited to the facts and arguments necessary to prove the violation was abated in accordance with the requirements of the order finding first violation. Any Order resulting from the rehearing may be appealed to the Circuit Court as set out below.

APPEAL: An aggrieved party may appeal an Order of the Hearing Examiner of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Hearing Examiner. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. Mail to RESPONDENT and to ANNE DALTON, Esquire, Town of Fort Myers Beach, 2523 Estero Blvd., Ft. Myers Beach, FL 33931; and by interoffice mail or hand delivery to Lee County Development Services Division (Code Enforcement), on October 19, 2006.



SECRETARY
LEE COUNTY HEARING EXAMINER'S OFFICE
P.O. BOX 398
FT. MYERS, FL 33902-0398

CODES AND BUILDING SERVICES
UPDATE INSPECTION REPORT

Case No.: 2006-043F
Ref. No.: VIO2006-06334

Name: PAUL MINOR
Hearing Date: 10/19/06

Preliminary hearing inspection
 Hearing Examiner directed inspection
Inspection requested by _____

An inspection conducted at 5545 AVENIDA PESCADORA FT. MYERS BEACH
(Location)

by BRUCE THORNTON on 10/19/06 disclosed that

If Abated: Abatement was achieved by _____

The following are attached: _____

If Not Abated: The following items remain to be corrected to accomplish abatement: _____

THERE HAS BEEN NO ACTION TAKEN TO ABATE
THE VIOLATION. REQUEST FINE BE IMPOSED

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated are true.

Bruce Thornton
(Inspector)

PARCEL #: 28-46-24-W3-0020A.0370

THIS SPACE FOR RECORDING

BEFORE THE HEARING EXAMINER FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA :
 Petitioner, :
vs. :
PAUL AND MARY MINOR: :
 Respondent :
_____ /

CASE NO: 2006-043F

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on SEPTEMBER 14, 2006, before the undersigned Lee County Hearing Examiner with the Respondents, not present. Having considered the sworn testimony, evidence and arguments presented, the Hearing Examiner finds and decides as follows:

A. FINDINGS OF FACT

1. The Respondents are the owners, lessees, responsible entity or otherwise in charge of or responsible for the subject property.
2. The Respondent received notice of the alleged existence of a certain condition on the property described herein, and that such condition constituted a violation of a Town of Fort Myers Beach Ordinance.
3. The notice given to the Respondent specified that certain actions to abate the alleged violation were to be taken by a time certain, but the Respondent failed to complete such actions timely.
4. The following condition exists on the subject property located, as reported by the Petitioner, at : 5545 Avenida Pescadora, Fort Myers, Beach, Florida 33931

VIOLATION IN TH FORM OF REMOVING PART OF THE EXISTING OVERHANG OF THE RESIDENCE AND CARPORT AND PREPARING TO CONSTRUCT A NEW ROOF, WITHOUT ANY PERMITS.

5. Petitioner has incurred administrative costs and expenses in the amount of **\$285.00** in the prosecution of this case.

B. CONCLUSION OF LAW

1. Respondents, by reason of the foregoing, in violation of FMB LDC SECTION 6-111 ADOPTING THE FLORIDA BUILDING CODE, AS AMENDED, SECTION 105.1 (NO PERMIT).

2. The costs incurred herein constitute a legal debt against the Respondent, pursuant to Section 162.09, Florida Statutes, which is due and owing to the Petitioner as of the date of this Order.

Wherefore it is ORDERED that Respondent shall:

1. Correct or abate the aforesaid violation in the following manner **PRIOR TO** the date listed below:
OBTAIN PROPER PERMIT AND FINAL INSPECTION.

In the event that the said violation is not corrected or abated as indicated above **prior to OCTOBER 19, 2006**, a fine of **\$100.00 per day** shall be imposed against Respondent, beginning on that date and continuing for each day that the aforesaid violation continues to exist.

When the violation has been abated, the Respondent **MUST CALL DEVELOPMENT SERVICES DIVISION (CODE ENFORCEMENT) AT 335-2535 AND REQUEST A RE-INSPECTION.**

2. Reimburse the Petitioner for the costs set out in Finding #5.

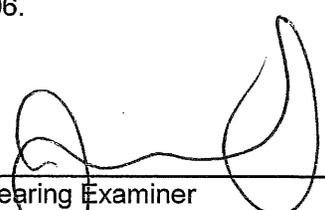
In the event the costs awarded herein are not paid prior to OCTOBER 19, 2006, these costs may become a lien against the Respondent, upon being recorded in the Public Records of Lee County, even if the violation has been abated in accordance with this Order.

Failure to abate this violation as set forth herein could result in the accrual of additional administrative costs and expenses.

Payment of administrative costs and fines: checks should be made payable to "Town of Fort Myers Beach and mailed to the Town of Fort Myers Beach (Code Enforcement), 2523 Estero Blvd., Fort Myers Beach, Florida, 33931 , or made in person at the offices of the Town of Fort Myers Beach, 2523 Estero Blvd., Fort Myers Beach, Florida. Please include case number on checks.

Non-compliance with the terms of this Order will result in the imposition of a lien against all real and personal property of Respondent, and could result in a lien foreclosure action.

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Lee County, Florida on September 14, 2006.



Hearing Examiner
in and for
the Town of Fort Myers Beach, Florida

APPEAL: An aggrieved party may appeal an Order of the Hearing Examiner of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Hearing Examiner. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. Mail to RESPONDENTS , and to ANNE DALTON, Esquire, Town of Fort Myers Beach, 2523 Estero Blvd., Fort Myers Beach, FL 33931; and by hand delivery to Lee County Development Services Division (Code Enforcement), on September 19, 2006.

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.

Legal Assistant to the Hearing Examiner for the
Town of Fort Myers Beach, Florida

TOWN OF FORT MYERS BEACH
Code Enforcement
Documentary Evidence Sheet

FMBCE Case # VIC2006-06334 Hearing Case # 2006-043F FMB CEO: Bruce Thornton

Property Owner: Paul & Mary Minor

Property Address: 5545 Avenida Pescadora Ft Myers Beach, Fl 33931

DOC #	DOCUMENT DESCRIPTION	LDC \$	PROVES?	DATE PREPARED	BY WHOM	TESTIFY? Y/N	AFFIDAVIT? Y/N
1	Photos	N/A	Violation exists	5/8/2006	BET	Y	N
2	Copy of Complaint	N/A	Complaint filed	5/8/2006	BET	Y	N
3	Appraiser Info	N/A	Owner Info	5/8/2006	BET	Y	N
4	Copy of NOV	6-111,105.4	NOV prepared	5/8/2006	BET	Y	N
5	Certified mail	N/A					
6	Oath of posting NOV	N/A	NOV posted	6/19/2006	BET	Y	N
7	NTA	N/A	NTA prepared	8/29/2006	BET	Y	N
8	Oath of posting NTA	N/A	NTA posted	8/30/2006	BET	Y	N
9	NTA green card	N/A					
10							
11							
12							
13							
14							
15							
16							

- OATH OF POSTING NOTICE -

RE: Code Enforcement Reference # VIO2006-06334

Code Enforcement Case # HE2006-043F

Respondent Paul & Mary Minor

Violation Address 5545 Avineda Pescadora Ft Myers Beach, Fl 33931
(Property Located in Lee County, Florida)

Strap # 28-46-24-W3-0020A.0370

I, Bruce Thornton certify that the attached Notice to Appear issued on
the above referenced case was posted on

August 31, 2006 at the Violation Address and at Town of Ft Myers Beach Town Hall

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in
it are true.



8/30/06
(date)

REQUIRED IF CERTIFIED MAIL RETURNED "UNCLAIMED" OR "REFUSED"

I certify that on August 29, 2006 a copy of the attached notice was sent to the above named
respondent by first class mail at 5545 Avenida Pescadora
(street address)

Ft Myers Beach, Fl 33931
(town/city, State, Zip Code)

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in
it are true.



8/30/06
(date)

12

- OATH OF POSTING NOTICE -

RE: Code Enforcement Reference # VIO2006-06334

Code Enforcement Case # HE2006-

Respondent Paul & Mary Minor

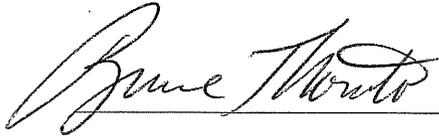
Violation Address 5545 Avenida Pescadora Ft Myers Beach, Fl 33931
(Property Located in Lee County, Florida)

Strap # 28-46-24-W3-0020A.0370

I, Bruce Thornton certify that the attached Notice of Violation issued on
the above referenced case was posted on

^{BET}
June 17, 2006 at the Violation Address and at Town of Ft Myers Beach Town Hall

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in
it are true.



(date) 6/19/06

REQUIRED IF CERTIFIED MAIL RETURNED "UNCLAIMED" OR "REFUSED"

^{BET}
I certify that on June 17, 2006 a copy of the attached notice was sent to the above named

respondent by first class mail at 5545 Avenida Pecadora
(street address)

Ft Myers Beach, Fl 33931
(town/city, State, Zip Code)

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in
it are true.



(date) 6/19/06

(11)

Ref# VIO 2006-06334
Paul & Mary Minor
5545 Avenida Pescadora
Ft Myers Beach, Fl 33931

August 29, 2006

Re: **FORT MYERS BEACH NOTICE OF HEARING**
ADDRESS OF VIOLATION: 5545 Avenida Pescadora Ft Myers Beach, Fl 33931
STRAP NO.: 28-46-24-W3-0020A.0370
CASE NO.: 2006-043F

Dear Property Owner:

Please be advised that a hearing has been scheduled before the Ft. Myers Beach Hearing Examiner with respect to a violation on the above-referenced property contrary to Fort Myers Beach:

 X Land Development Code Section 6-111 adopting the Florida building code, as amended, Section(s) 104.1 (Permits)

 Land Development Code
Section(s) _____

 Ordinance _____

The date, time and place of this hearing is as follows:
Fort Myers Beach City Hall
2523 Estero Blvd., Fort Myers Beach, Florida
Date: Thursday, Sept. 14, 2006
Time: 9:00 a.m.

You are requested to attend this hearing. In defense against the cited violation, you or your representative is entitled to present evidence or argument and cross-examine witnesses. Should you or a representative fail to appear at this hearing, you will be deemed to have waived this right.

10

Whether or not you are present at this hearing, the Town of Fort Myers Beach Division of Code Enforcement will go forward with the presentation of its case in support of the violation cited in the Notice of Code Violation previously received by you. At the conclusion of this hearing, the Town of Fort Myers Beach will request the Hearing Examiner to enter an order finding a violation has occurred and imposing a fine.

If the hearing Examiner finds you guilty of the violation as cited, a fine of up to \$250 per day may be imposed for each day the violation continues past the date set for compliance. **Upon a finding of violation, the Town is entitled to all costs incurred in prosecuting the case. This is in addition to any fine which may be imposed.**

Further, any fine imposed by the Hearing Examiner along with costs incurred by the Town of Fort Myers Beach to prosecute this case will be recorded as a lien against the property referenced above and any other real or personal property you may own.

In the event this violation is abated prior to the date set for hearing, it is in your best interest to contact Town of Fort Myers Beach Code Enforcement and request an inspection of the property to verify same. **However, even if the violation is abated prior to the date set for hearing, the Town may bring this case forward and seek a finding of violation.**

Please note, you may review your case file with respect to this violation upon reasonable notice to Town of Fort Myers Beach Code Enforcement located at 2523 Estero Blvd., Fort Myers Beach, Florida. You may also contact Code Enforcement with respect to any questions you may have at (239) 765-0919 Ext. 112.



Bruce Thornton
Code Enforcement Officer

Reference# VIO 2006-06334

Certified Mail #: 7005 1820 0002 6097 7651

DP/lh

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**NOTICE OF CODE VIOLATION
TOWN OF FT MYERS BEACH**



LEE COUNTY
SOUTHWEST FLORIDA

Ref: VIO 2006-06337 Date: May 9, 2006

Paul & Mary Minor

5545 Avenida Pescadora

Ft Myers Beach, Fl 33931

**DEVELOPMENT SERVICES
CODE ENFORCEMENT
P.O. BOX 398
FT. MYERS, FL. 33902
(239)765-0202**

RE: VIOLATION ADDRESS: 5545 Avenida Pescadora Ft Myers Beach, FL
STRAP# 28 - 46 - 24 - W3 - 0020A - 0370

Dear Property Owner/Tenant:

An inspection of the above referenced property on 5/8, 2006 disclosed the existence of a violation contrary to Town of Ft Myers Beach FMB LDC Sect 6-111 adopting the Florida Building Code, as amended, Sect 105.1 (No Permit)

This violation is in the form of Removing part of the existing overhang of the residence and carport and preparing to re-roof.

You are directed to abate or remedy this violation within 30 days of receipt of this notice by Obtain the proper permits for the work already done and the work going to be done and then pass all inspections.

ONCE THE VIOLATION HAS BEEN CORRECTED, PLEASE CONTACT THE CODE ENFORCEMENT OFFICER NAMED BELOW at (239) 765-0202.

If you fail to remedy this condition within the time frame specified above or if the violation is abated and reoccurs, this case may be scheduled before the Lee County Hearing Examiner. You will be notified as to time, date and location of this hearing.

Please be advised that, under Florida Statutes Chapter 162 and Town of Ft Myers Beach Land Development Code Chapter 2, Article VII, a fine of up to \$250.00 per day may be imposed for each day this violation continues to exist past the date set for compliance by the Hearing Examiner.

Please contact Lee County Code Enforcement at (239) 765-0202 with respect to any questions you may have regarding this notice.

Bruce Thornton

(Accepting party) PRINT NAME

_____/_____
(Signature of accepting party) / (Date)

Bruce Thornton PRINT
Code Enforcement Officer
Development Services Division

Acceptance of this document does not constitute an admission of responsibility, but does fulfill the statutory notice requirements of Florida Statute 162.12. The person accepting the document was informed of the contents of the notice at the time of delivery.

I swear or affirm the above statements are true and correct to the best of my knowledge and belief.

Sworn and subscribed before me this _____ day of _____, 20____ by _____ personally known to me.

_____/_____
(Inspector/Affiant) / (Date)

Notary Public State of Florida

②

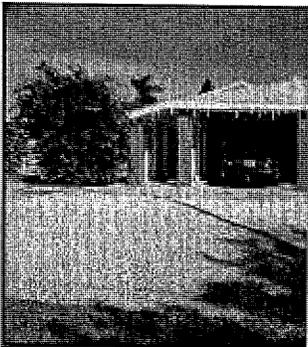
PROPERTY DATA FOR PARCEL 28-46-24-W3-0020A.0370
TAX YEAR 2005

Parcel data is available for the following tax years:
[2001 | 2002 | 2003 | 2004 | 2005]

[[Next Lower Parcel Number](#) | [Next Higher Parcel Number](#) | [Display Building Permits on this Parcel](#)
| [Display Tax Bills on this Parcel](#) | **NEW!** [Tax Estimator](#)]

OWNERSHIP, LEGAL, SALES AND DISTRICT DATA ARE FROM THE CURRENT DATABASE.
LAND, BUILDING, VALUE AND EXEMPTION DATA ARE FROM THE 2005 ROLL.

PROPERTY DETAILS

<p>OWNER OF RECORD MINOR PAUL + MARY 5545 AVENIDA PESCADORA FORT MYERS BEACH FL 33931</p>	<p>[VIEWER] TAX MAP [PRINT]</p>	<p>IMAGE OF STRUC</p>
<p>SITE ADDRESS 5545 AVENIDA PESCADORA FORT MYERS BEACH FL 33931</p>		
<p>LEGAL DESCRIPTION HOLIDAY HEIGHTS BLK A PB 9 PG 58 LOT 37 + E 1/2 LOT 36.</p>		<p>Photo Date: Decemb</p>

[[PICTOMETRY](#)]

<p>TAXING DISTRICT 033 - TOWN OF FT MYERS BEACH</p>	<p>DOR CODE 01 - SINGLE FAMILY RESIDENTIAL</p>
--	---

<p>PROPERTY VALUES (TAX ROLL 2005) [NEW! HISTORY]</p>	<p>EXEMPTIONS</p>	<p>ATTRIBUTES</p>
--	--------------------------	--------------------------

2

FMB Photos #19
 PIC # 4-9

Violations - VID2006-06334 Status: **VID** Updated: **5/9/2006** **BET**

Name: **MINOR PAUL + MARY** Address: **5545 AVENIDA PESCADORA FORT MYERS BEACH 33931**

Mstr #: **VID2006-06334** Project:

Doing contruction work without the proper permits.

Staff Contact: **BET** Violation Type: **No Permits**

Code Officer: **B. Thornton** Violation: **Yes**

Reported By:

Phone #: **(239) 878 7200**

Subdivision: **Fort Myers Beach**

Directions:

Dates

Received: **5/9/2006**

Inspected:

Closed:

Activity for VID2006-06334

Description	Menu Code	Date1	Date2	Date3	Disp	Done By	Notes
Complaint Received	A0010	5/9/2006		5/9/2006	DONE	BET	
Insp - NOV Re-Inspect	H0710	5/9/2006	6/23/2006				
Correspondence/Phon	F0070			5/9/2006	DONE	BET	5/9/06 received a pho
Insp - Initial Inspection	H0700	5/9/2006	5/12/2006	5/9/2006	DONE	BET	Contractor has remov
Notice of Violation (F)	E0930	5/9/2006		5/9/2006	DONE	BET	sent certified mail

①

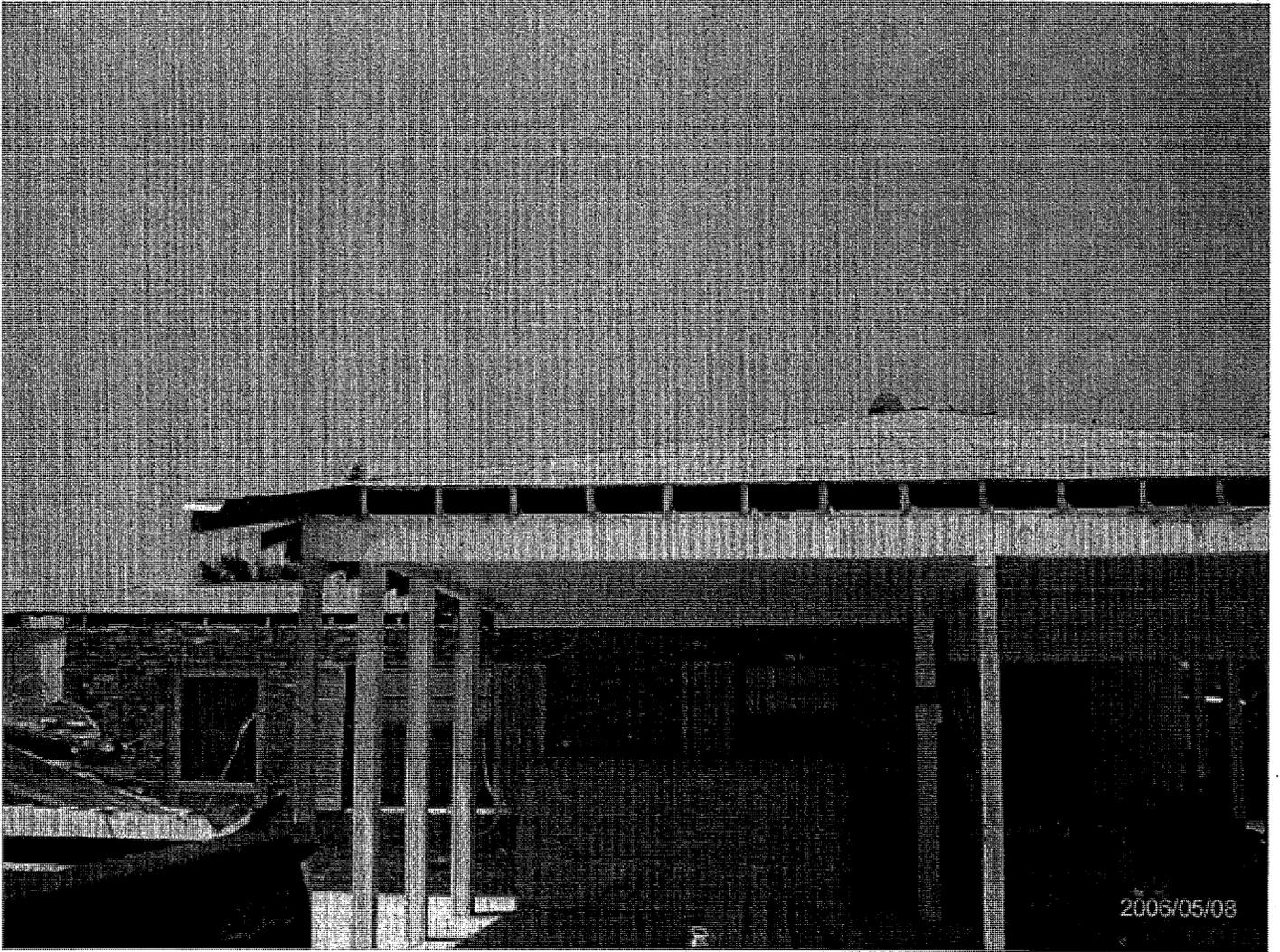
REFERENCE V202006-06334

The 3 attached photo(s) were taken by Bruce Thornton Inspector
(Number)
on the 8th day of MAY 2006, . The photo(s) fairly and accurately depict the
condition of the property located at 5545 AVENIDA PESCADORA in
Lee County, Florida.

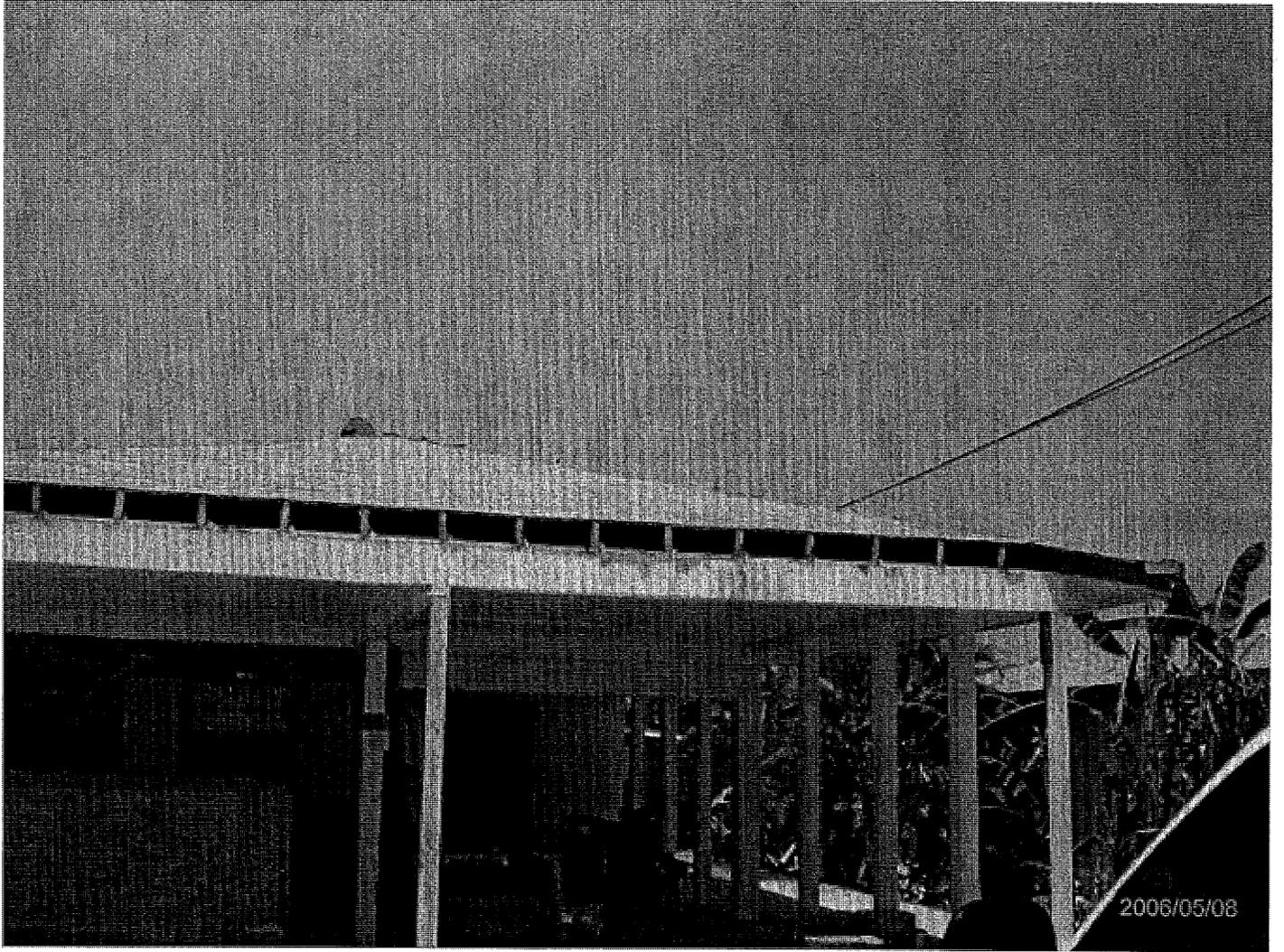
Under penalties of perjury, I declare that I have read the foregoing document and that
the facts stated in it are true.


(Signature of Inspector)

6



5



④



3

EXB

TOWN OF
FORT MYERS BEACH

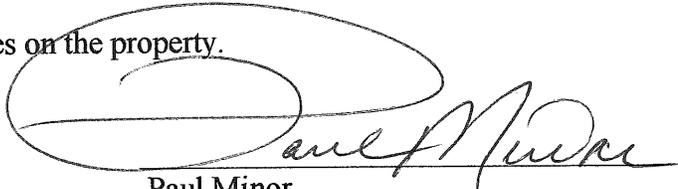
JUL 12 2013

RECEIVED BY

REQUEST FOR CODE ENFORCEMENT LIEN REDUCTION

I hereby request a reduction in the \$21,285.00 lien imposed on my property at 5545 Avenida Pescadora and state the following in support of the request:

1. A copy of the Code Enforcement Order creating the lien is attached.
2. The case number was 2006-43F.
3. The property was brought into compliance on May 17, 2007, at which time a valid building permit was issued.
4. The reduction is appropriate for the following reasons:
 - a. The work in question consisted of a modification of the front of my house and a garage enclosure. I did not believe I needed a permit for what I initially thought was a relatively minor project. We cut off the soffits over the front door and along the side of the garage by the front door. After about four days of work, the building inspector ordered the project to be stopped. I complied with his direction and placed tarps over the soffit openings.
 - b. I contacted an architect I knew in Wisconsin (my home) immediately to address the problem. He initially agreed to do the work, but, after two months of delays and repeated phone calls, he concluded that he did not have time to do the job, and I had to find a new architect.
 - c. I did not receive mailed notices relating to the code case due to my residence in Wisconsin until after the abatement period had expired.
 - d. I had difficulty finding a Florida architect who had time to do the design work, as the issue arose during the height of the Lee County building boom. After I hired him, he had other projects that took priority over mine. Permitting was also delayed when the employee who was primarily responsible for the design had a serious accident. Once the permit was obtained, I worked on the project continuously until it was completed.
 - e. The absence of a permit for the minimal construction work that was actually done in 2006 did not create any hazards or danger to the public.
 - f. The violation has been abated for over six years.
5. The lien should be released upon payment of a reduced fine, the suggested amount of which is identified below.
6. The reasons for the delay in obtaining the permit are set out in Paragraph 4 above.
7. I believe an appropriate reduction, under the circumstances, would be to \$1,000.00, plus \$285.00 in prosecutorial costs.
8. There are no outstanding mortgages on the property.


Paul Minor

Signed and sworn to (or affirmed) before me on this 29 day of June, 2013, by Paul Minor, who is () personally known to me or () has produced DL as identification.

Andrea M. Goranson

Notary Public

My Commission Expires: Exp 5/21/17



PARCEL #: 28-46-24-W3-0020A.0370

THIS SPACE FOR RECORDING

BEFORE THE HEARING EXAMINER OF
LEE COUNTY, FLORIDA IN AND FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA	:	
Petitioner,	:	CASE NO.: 2006-43F
vs.	:	
PAUL AND MARY MINOR	:	
Respondent	:	

CODE ENFORCEMENT ORDER

THIS CASE was first heard by the undersigned Lee County Hearing Examiner at a public hearing on September 14, 2006, after which an Order was entered which found that a violation existed on the subject property and required the Respondent, as the responsible person or entity, to complete certain actions that would abate the violation by a date certain or face the imposition of a specified fine.

On, October 19, 2006, the Hearing Examiner received competent evidence that the violation had not been abated in accord with the above Order, and therefore finds and decides:

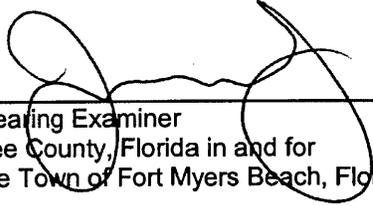
1. That the above-noted Order has not been complied with; and
2. That the violation of NO PERMITS still exists on the subject property; and
3. That the Respondent has not paid the prosecution costs in the amount of \$285.00 which are due and owing to the Petitioner per Chapter 162, Florida Statutes.

It is ORDERED that Respondent pay a fine of **\$100.00 per day, beginning on October 19, 2006**, and continuing for each and every day that the aforesaid violation exists and continues on the property located, as reported by the Petitioner, at 5545 Avenida Pescadora, Fort Myers Beach, Florida 33931.

Upon recording in the public records, this Order shall constitute a lien for the fine amount against all real and personal property of Respondent, including but not limited to the property described on the attached exhibit, and subsequent foreclosure of such lien may result in the loss of such property.

The prosecution costs awarded herein may also become a lien against Respondent, upon said recording, pursuant to Chapter 162, Florida Statutes.

DONE AND ORDERED at 1500 Monroe Street, Second Floor, Fort Myers, Lee County, Florida on October 19, 2006.



Hearing Examiner
Lee County, Florida in and for
the Town of Fort Myers Beach, Florida

REHEARING: If the property owner disagrees with the Hearing Examiner's finding herein that the violation has not been properly abated, which has resulted in the imposition of the per day fine, then the property owner has 20 days from the date of this order to request a rehearing. The request must be made in writing to the Lee County Code Enforcement Office and will be scheduled, if possible, on the next regularly scheduled Code Enforcement public hearing docket. Evidence and testimony presented at the hearing will be limited to the facts and arguments necessary to prove the violation was abated in accordance with the requirements of the order finding first violation. Any Order resulting from the rehearing may be appealed to the Circuit Court as set out below.

APPEAL: An aggrieved party may appeal an Order of the Hearing Examiner of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Hearing Examiner. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. Mail to RESPONDENT and to ANNE DALTON, Esquire, Town of Fort Myers Beach, 2523 Estero Blvd., Ft. Myers Beach, FL 33931; and by interoffice mail or hand delivery to Lee County Development Services Division (Code Enforcement), on October 19, 2006.



SECRETARY
LEE COUNTY HEARING EXAMINER'S OFFICE
P.O. BOX 398
FT. MYERS, FL 33902-0398

Lot 37 and the East one-half (1/2) of Lot 36, Block A, of that certain subdivision known as Holiday Heights, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 58.

LAW OFFICE OF MATTHEW D. UHLE LLC
15128 SAM SNEAD LN.
FORT MYERS, FL 33917

63-215/631
1000114027302

1329

Date 7/22/13

Pay to the order of Town of Fort Myers Beach

\$ 290.00

Two hundred dollars and

00
Dollars

 Security Features Included. Details on Back.



SUNTRUST

ACH RT 061000104



Memo _____

Matthew D. Uhle

MP

⑆063102152⑆1000114027302⑆ 1329

EXC.

[Home](#) [Case Types](#) [Status](#) [Parcel](#) [Help](#)

View Case Status

The information below summarizes the permit/case you selected.

Case Number	Case Type	Value	Status
RES2007-03336	Alteration/Interior Remodeling	\$28,888.00	<u>Archived</u>

Project Name:			
Address:	5545 AVENIDA PESCADORA FORT MYERS BEACH 33931	Strap #:	<u>284624W30020A0370</u>
Directions:	SAN CARLOS BLVD, EAST AFTER THE BRIDGE, LEFT ONTO AVENIDA PESCADORA **414-975-3697**		
Description:	NEW ROOF, COVERT EXISTING CARPORT TO GARAGE, REPLACE 6X6'S IN REAR		
Important Dates:	Received: 2/22/2007	Issued: 5/17/2007	Finalized: 1/3/2008 Expiration: 7/2/2008
Flood Zone:	AE	Required Elevation: 12	Flood Compliance: Not Applicable
Impact Protection:	Not Applicable		

People		
Role	Name	Address
Owner	MINOR PAUL + MARY	5545 AVENIDA PESCADORA FORT MYERS BEACH FL 33931
Owner Builder	PAUL MINOR	5545 AVENIDA PESCADORA FORT MYERS FL 33931

Permitting/Plan Review Activity

Type	Requested	Scheduled	Completed	Disposition	County Staff
Application Received	2/22/2007		2/22/2007	<u>DONE</u>	Terra L Gehrke
Zoning Review	2/22/2007	3/1/2007	3/2/2007	<u>DONE</u>	<u>Dolores Waldron</u>
<i>Comments: AE/12**ALL SET BACKS EXISTING***LANDWARD OF THE CC LINE</i>					
Resubmit Zoning Review	5/11/2007	5/14/2007	5/14/2007	<u>REJ</u>	<u>Dolores Waldron</u>
<i>Comments: 5/10/07 new site plan**CAN NOT HAVE ANY STRUCTURE BEFROE THE PRINCIPAL IN THIS CASE THE EXISTING GARAGE WOULD BE INCREASING THE NON CONFORMATY PER BRAD CASE**ORIGIANLLY APPROVED BECAUSE THE CARPORT WAS EXISTING.</i>					
Resubmit Zoning Review	5/17/2007	5/20/2007	5/17/2007	<u>DONE</u>	<u>Dolores Waldron</u>

	<i>Comments: covert carport to garage**letter in file/scanned from Brad Case approving conversion**no change to set backs</i>				
Plan Review	2/22/2007	3/1/2007	3/16/2007	<u>REJ</u>	<u>Linda Ramsey</u>
	<i>Comments: RES REM lmr 3/14/07; 3/16/07 tried faxing # given, had to mail rejection LMR - REJECTION PICKED UP BY HANK - 3-22-07</i>				
Resubmit Plan Review	4/5/2007	4/8/2007	5/10/2007	<u>REJ</u>	<u>Linda Ramsey</u>
	<i>Comments: **4/9/07 Sent one set of plans to Town of Fort Myers Beach, rest of plans/folder on Ft. Myers Beach Shelf LMR; 5/10/07 see new resubmit of drawings</i>				
Resubmit Plan Review	5/2/2007	5/5/2007	5/11/2007	<u>DONE</u>	<u>Linda Ramsey</u>
	<i>Comments: new drawings - new foundation plan with shaded existing areas. Also correction on foundation plan in regards to existing office space.; 5/10/07 **HOLD** sent copy of plans and revision form to The Town of Fort Myers Beach for their review (plans on my beach shelf) LMR; 5/10/07 received e-mail from Jim Carrasco @ Beach O.K. LMR</i>				
Impact Fee Determination	2/22/2007		5/11/2007	<u>DONE</u>	<u>Linda Ramsey</u>
Additional Documents Required	2/22/2007				
	<i>Comments: NOC - ALSO WILL NEEDS POWER OF ATTORNEY FOR KEN ALFORD TO PICK UP</i>				
Ready for Pick-up (F)	5/17/2007		5/17/2007	<u>DONE</u>	Phyllis A Chenoweth
	<i>Comments: READY</i>				
Revision Submitted (Plan Rev)	10/9/2007	10/12/2007	10/10/2007	<u>DONE</u>	<u>Linda Ramsey</u>
	<i>Comments: Rev (revision to add (2) pgt windows FL239-R10) Ramsey 10-10-07 P/U REV BY PAUL MINOR 10/31/07</i>				
Compliance Cert. Issued (F)			1/3/2008	<u>DONE</u>	Colleen Henary
Filed in Box			4/10/2009	<u>DONE</u>	Geoffrey T Rinehart

Permit/Subpermit Activity

Type	Requested	Scheduled	Completed	Disposition	County Staff
Permit Issued (F)			5/17/2007	<u>DONE</u>	Jennifer M Cavanaugh
Print Permit Info Board (F)			5/17/2007	<u>DONE</u>	Jennifer M Cavanaugh
Roof Sub Permit Req'd/ Issued	5/11/2007		6/28/2007	<u>DONE</u>	Kendra E Ricketts

Comments: shingle BILLS ROOFING INC

Inspections

Type	Requested	Completed	Disposition	County Staff
------	-----------	-----------	-------------	--------------

INSP - NOTICE OF COMMENCEMENT	2/22/2007	5/17/2007	<u>DONE</u>	Jennifer M Cavanaugh
Insp Struct - 101 Foundation	5/21/2007	5/22/2007	<u>DONE</u>	Thomas R Grove
Insp Struct-130 Shtg-strap-eng	6/21/2007	6/22/2007	<u>DONE</u>	Thomas R Grove
<i>Inspection Comments: Verbal 922 W/Eng letters for changes attached</i>				
Insp Roof - 501 Roof Dry In	7/18/2007	7/19/2007	<u>DONE</u>	Morgan L. Highfill
Insp Struct - 105 Framing	7/19/2007	7/20/2007	<u>DONE</u>	Thomas R Grove
Insp Roof - 503 Final Roof	7/31/2007	8/1/2007	<u>DONE</u>	James C. Meisberger
Insp Struct - 106 Final Frame	12/29/2007	1/2/2008	<u>DONE</u>	Charles L Moorefield

Fees

Item	Fee Amount	Fee Remaining
New Bldg Construction & Addn	50.00	0.00
ROF Residential - Roof	35.00	0.00
Plan Review	25.00	0.00
Total	\$110.00	\$0.00

The total fee due on this permit/application is \$0.00

NOW AVAILABLE! Pay Re-Inspection Fees Online

Documents for Activities

Compliance Cert. Issued (F) [frescerc](#) Document Snapshot - PDF of form: frescerc (62395 bytes)

If you are unable to open a 'Certificate of Occupancy or an Elevation Certificate', please send an email to [Geoff Rinehart](#). If you are unable to open any other type of document, please send an email to [Jean Mars](#). Please include the case number and the name of the document you are looking to receive. For General Permitting information please call 239-533-8329 or email eConnect@leegov.com.

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		Page <input type="text" value="1"/> of 1	Show me <input type="text" value="20"/> per page <input type="button" value="Go"/>	
8 matches				
Account	Tax Year	Name/ Address	Status/ Outstanding Balance	
28-46-24-W3-0020A.0370	2012	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2011	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2010	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2009	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2008	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2007	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2006	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>
28-46-24-W3-0020A.0370	2005	MINOR PAUL + MARY 5545 AVENIDA PESCADORA	PAID	<input type="button" value="Details"/>

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EX A.



Marilyn W. Miller
Direct Dial: 239-985-4807
marilyn.miller@fowlerwhite.com

May 8, 2013

Matthew Uhle, Esq.
1617 Hendry St., Suite 411
Fort Myers, FL 33901

VIA Email and Regular Mail

Re: Code Enforcement Case No. 2006-43F

Dear Matt:

It is my understanding that you have requested payoff information concerning the above-referenced Code Enforcement case.

The violation in that case consisted of performing certain construction work without the proper permits. A copy of a printout of the case status from Lee County E-Connect is enclosed for your convenient reference. It appears that the violation was not abated by the violator until a valid permit for the construction was issued on May 17, 2007. I determined that from the permit record in E-Connect which indicates a permit issue date of May 17, 2007.

The Code Enforcement Order that was entered by the Hearing Examiner on October 19, 2006, states that the violation was still in existence on the property and it was ordered that a fine of \$100.00 per day, beginning on October 19, 2006, must be paid by the violator for each day that the violation exists on the property. The order also determined that prosecution costs in the amount of \$285.00 must also be paid. A copy of that Order is enclosed for your convenient reference.

Based on the foregoing, I have determined that the fine of \$100 per day began running on October 19, 2006 and continued running until May 17, 2007 when a valid building permit was issued. The time period the fine ran was 210 days. The fine, therefore, totals \$21,000.00, plus the prosecutorial fee of \$285.00, for a grand total of \$21,285.00. Upon payment of this amount, the Town will issue a Release of Lien.

FOWLER WHITE BOGGS P.A.

TAMPA • FORT MYERS • TALLAHASSEE • JACKSONVILLE • FORT LAUDERDALE
2235 FIRST STREET • FORT MYERS, FL 33901 • P.O. BOX 1567 • FORT MYERS, FL 33902
TELEPHONE (239) 334-7892 • FAX (239) 334-3240 • www.fowlerwhite.com

Matthew Uhle, Esq.
May 8, 2013
Page 2

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Sincerely,

FOWLER WHITE BOGGS P.A.



Marilyn W. Miller

Enclosures

cc: Terry Stewart, Town Manager
Walter Fluegel, Community Development Director
Robert Mercado, Code Enforcement Officer

FOWLER WHITE BOGGS P.A.

TAMPA • FORT MYERS • TALLAHASSEE • JACKSONVILLE • FORT LAUDERDALE

EX. F.

ORDINANCE NO. 12-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO CODE ENFORCEMENT LIENS; AMENDING SECTION 2-427 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE BY DELETING CERTAIN PROVISIONS RELATING TO THE EXECUTION OF SATISFACTIONS OF LIEN AND JURISDICTION OVER LIENS; CREATING A NEW DIVISION 4 IN CHAPTER 2, ARTICLE V, OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, TO BE ENTITLED "REDUCTION AND/OR RELEASE OF CODE ENFORCEMENT LIENS," CREATING SECTION 2-432, "PROCEDURE TO OBTAIN A REDUCTION AND/OR RELEASE OF A CODE ENFORCEMENT LIEN;" PROVIDING FOR APPLICATION REQUIREMENTS; CRITERIA FOR THE TOWN MANAGER OR DESIGNEE AND THE TOWN COUNCIL TO FOLLOW WHEN CONSIDERING APPLICATIONS FOR REDUCTION OR FORGIVENESS OF CODE ENFORCEMENT LIENS; TIME PERIOD WITHIN WHICH ANY REDUCED LIEN AMOUNT MUST BE PAID; RECORDING OF RELEASE OF LIEN; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 162.09(3), *Florida Statutes*, provides that Code Enforcement liens run in favor of local governing body, and the local governing body may execute a satisfaction or release of any code enforcement lien; and

WHEREAS, Section 162.09(2)(c), *Florida Statutes*, provides that the code enforcement board, or lawful designee, may reduce a code enforcement fine before the order imposing such fine has been recorded; and

WHEREAS, Attorney General Opinion 02-62 and Attorney General Opinion 99-03 opine that code enforcement boards or designee, are not authorized to reduce fines after code enforcement orders have been recorded in the public records, and that only the local governing body is vested with the authority to reduce or satisfy liens after such liens have been recorded; and

WHEREAS, Attorney General Opinion 99-03 concludes that a Town Council may delegate its authority to execute satisfactions or releases of code enforcement liens so long as such delegation does not result in a complete divestiture of such liens by the Town Council to a private party; and

WHEREAS, pursuant to Section 166.021, *Florida Statutes*, the TOWN OF FORT MYERS BEACH through its home rule powers may exercise any power for municipal purposes except those expressly prohibited by law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Sections 2-427(c) and (e) of the Town of Fort Myers Beach Land Development Code are hereby amended as follows:

(c) **Creation of a lien.** A certified copy of an order imposing a fine or a fine plus repair costs, and/or assessing the costs of prosecution, may be recorded in the public records and thereafter will constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order will not be deemed to be a court judgment except for enforcement purposes. A fine imposed under this article will continue to accrue until (i) the violator has complied with the order rendered by the special magistrate or until (ii) a judgment is rendered in a suit to foreclose the lien, whichever occurs first. A lien arising from a fine imposed under this section runs in favor of the Town of Fort Myers Beach, and the town manager may execute a satisfaction or release of lien entered in accordance with this section. The special magistrate may authorize the town attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing thereof or sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created under this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution. The money judgment provisions of this section will not apply to real or personal property which is covered under section 4(a), article X of the state constitution.

~~(e) **Jurisdiction over lien.** The special magistrate will retain jurisdiction over all cases in which a lien has been recorded until the lien has been released. Upon a showing of clear and convincing evidence by the violator, the special magistrate has the authority to reduce the lien amount for pay off purposes, in the following circumstances:~~

~~a. The violator has come into compliance, but due to circumstances beyond his or her control resulting in extreme financial hardship, the violator cannot pay the full amount necessary to satisfy and release the lien; or~~

~~b. The violator has not come into compliance, but has a contract to sell the property, contingent upon release of the lien, to a contract purchaser who intends to bring the property into compliance, provided, however, that the contract purchaser must first enter into an agreement with the town, indicating his intent to bring the property into compliance and a timetable for completing the work and establishing security for performance. The authority to reduce fines granted to the special magistrate will be applicable to all code enforcement cases in which a lien has been placed on the property and remains unsatisfied.~~

Section 3. The following shall be added as a new Division 4 in Article V, Chapter 2 of the Land Development Code of the Town of Fort Myers Beach:

**DIVISION 3. REDUCTION AND/OR RELEASE OF
CODE ENFORCEMENT LIENS.**

Sec. 2-432. Procedure to obtain reduction and/or release of a code enforcement lien.

(a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or

property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:

(1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.

(2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:

- (i) A copy of the order imposing a lien upon the property;
- (ii) The code enforcement case number;
- (iii) The date upon which the violator/property owner brought the subject property into compliance with the requirements of the Town Code;
- (iv) The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
- (v) The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
- (vi) The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded; and
- (vii) The amount of the reduction in penalty or fine requested by the violator/property owner;
- (viii) Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default.
- (iv) All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal.
- (v) The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.

(3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.

(4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that

the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.

(5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:

(i) If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.

(ii) If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.

(iii) A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.

(6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.

(7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:

(i) The gravity of the violation(s);

(ii) The amount of time it took the violator/property owner to come into compliance;

(iii) The accrued amount of the code enforcement lien as compared to the market value of the property;

(iv) Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal

amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;

(v) Any previous code violation(s) of applicant/owner;

(vi) Consideration for the future or proposed use of the property for public purpose; and

(vii) The number and status of all other properties owned by the applicant/owner in Lee County, Florida.

(8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.

(9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the Town Manager or designee.

(10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within thirty (30) days of the town council approval date. If the reduced amount is not paid in full within the thirty (30) day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.

(11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the Public Records of Lee County, Florida and provide a copy to the property owner.

Section 4. CODIFICATION. It is the intention of the Town Council of the TOWN OF FORT MYERS BEACH, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Land Development Code of the TOWN OF FORT MYERS BEACH, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to Section, "Article," or other appropriate word.

Section 5. CONFLICTS. All previously adopted Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Section 6. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

Section 7. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Kosinski and seconded by Council Member Mandel and upon being put to a roll call vote, the result was as follows:

Larry Kiker, Mayor aye
Joe Kosinski aye
Alan Mandel aye

Bob Raymond, Vice Mayor aye
Jo List aye

DULY PASSED AND ADOPTED THIS 18th DAY OF JUNE 2012, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By: 
Larry Kiker, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
FOWLER WHITE BOGGS, Town Attorney