

# VDF LAW, PLLC

Van D. Fischer, Esquire

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2018 JUN -3 PM 12:08  
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June 8, 2018

Cheri Smith, City Clerk  
City of Key West City Hall  
1300 White Street  
Key West, Florida 33040

RE: Notice of Administrative Appeal of the Final Order and Administrative Decision made by the City of Key West Chief Building Official which cancelled Building Permit No. 17-1560 on May 31, 2018.

Dear Ms. Smith:

I represent the interests of Dr. Richard Walker, MD, with respect to Building Permit No. 17-1560 issued October 26, 2017, for the construction of a 75 wet-slip docking facility located at 2407 North Roosevelt Boulevard, Key West, Florida 33040, RE # 00002280-000100, AK # 8890613. Pursuant to Sections 90-305 and 90-430 of the City of Key West Code of Ordinances ("City Code") I am submitting this Notice of Appeal together with the required fee of One Thousand and 00/100 Dollars (\$1,000.00) for purposes of appealing the May 31, 2018, final order and administrative decision made by the City of Key West ("City") Chief Building Official, Ronald Wampler, which cancelled Building Permit No. 17-1560. A true and correct copy of the pertinent portions of the voided permit is attached hereto and incorporated herein as Exhibit P.

The Chief Building Official improperly voided Building Permit No. 17-1560, and failed to provide written notice to Dr. Walker and his contractor as required by Section 90-360 of the City Code. My client learned that the permit was voided by happenstance when his contractor was told in passing by the building department that the permit had been voided. The reason stated on the permit was "Please void this permit since the City Development Agreement has expired. Per Ron Wampler." A true and correct copy of the pertinent portions of the voided permit is attached hereto and incorporated herein as Exhibit P.

## **Background**

Dr. Richard Walker, MD, owns the property located at 2407 North Roosevelt Boulevard, Key West, Florida, which includes a large man-made boat basin and the submerged lands therein. Dr. Walker applied for and successfully obtained permits from the City, the U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the construction of a 75 wet-slip docking facility. A timeline of the City approval process follows. True and correct copies of the identified documents are attached hereto and incorporated herein as listed below.

**Major Development Plan and Conditional Use Approval Res. No. 14-316**

- City Commission Resolution No. 14-316 (Exhibit A):.....10/21/14
- Resolution No. 14-316 filed with city clerk (Exhibit A):.....11/17/14
- 30-day local appeal period (Exhibit B):.....11/18/14-12/18/14
- Appeal filed (Exhibit C):.....12/17/14
- Appeal Dismissed (Exhibit D):.....06/11/15
- Resolution No. 14-316 rendered by City to DEO (Exhibit E):.....04/08/16
- Effective Date per Res. 14-316 (45-days from rendering to DEO, Exhibit E):...05/23/16
- Expiration date (*"Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof."* – Res. No 14-316, Sec. 3 - Exhibit A):.....05/24/17

**Building Permit No. 17-1560**

- Application submission date (Exhibit F):.....04/19/17
- Permit issued (Exhibit G):.....10/26/17
- Framing Inspection (Exhibit H):.....03/11/18
- Permit Extension Notice filed based on EO 17-235<sup>1</sup>, 17-287<sup>2</sup> & 17-330<sup>3</sup>, and F.S. 252-363<sup>4</sup> extending permit until 10/06/19 (Exhibit I):.....05/25/18
- Building permit Extension Notice filed based on EO 18-51<sup>5</sup>, and F.S. 252-363<sup>4</sup> extending permit until 11/05/19 (Exhibit N):.....05/30/18
- Building permit cancelled by City (Exhibit P):.....05/31/18

It is important to note, that City Commission Resolution No. 14-316 (referred to as the “City Development Agreement” by Ron Wampler) was appealed to Circuit Court which delayed the required transmittal to the Florida Department of Economic Opportunity (“DEO”). This delay caused the effective date of the Resolution to be May 23, 2016. Section 3 of Resolution No. 14-316 required that a “Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.” In other words, to prevent the Resolution from expiring, an application had to be submitted prior to May 23, 2017. As the timeline shows, the permit was submitted on April 19, 2017, more than a month prior to the 12-month expiration deadline, thereby satisfying the requirements of Resolution and preventing the Resolution from expiring. Thus, the Resolution remains a valid and active City approval for the docking facility.

<sup>1</sup> Executive Order No. 17-235 (Exhibit J) issued 09/04/17 in conjunction F.S. Sec. 252-363 provided a 60-day tolling + 6-month extension

<sup>2</sup> Executive Order No. 17-287 (Exhibit K) issued 11/02/17 in conjunction F.S. Sec. 252-363 extending EO 17-235

<sup>3</sup> Executive Order No. 17-330 (Exhibit L) issued 12/29/17 in conjunction F.S. Sec. 252-363 extending EO 17-287

<sup>4</sup> F.S. 252.363 Tolling and extension of permits and other authorizations (Exhibit M)

<sup>5</sup> Executive Order No. 18-51 (Exhibit N) issued 02/23/18 in conjunction F.S. Sec. 252-363 extending EO 17-330

## **Basis of Appeal**

The cancellation of Building Permit No. 17-1560 by the Chief Building Official was invalid because it was based on the incorrect determination that the “City Development Agreement has expired,” when, in fact, the “Development Agreement” has not expired. As discussed, the so-called “City Development Agreement” (Resolution No. 14-316) became effective on May 23, 2016, after the required DEO approval and appeal period concluded. On April 19, 2017, a full, complete, and final application for all required permits was submitted which was within 12 months after the Resolution became effective, thereby preventing expiration of the Resolution. City Building Permit No. 17-1560 was issued on October 26, 2017, and, pursuant to Sections 90-358 and 90-359 of the City Code, construction began within 90-days of issuance, and a framing inspection was made within six months of issuance on March 11, 2018. Therefore, both Resolution No. 14-316 and Building Permit No. 17-1560 are valid and active approvals for the docking facility, and the cancellation thereof by the Chief Building Official was invalid.

The four Executive Orders issued by the Governor of Florida in the aftermath of Hurricane Irma tolled the period remaining on approved development orders and permits pursuant to Section 252.363, Fla. Stat. Each Executive Order provided 60-day extension periods which collectively provided for a 240-day tolling period which began on September 4, 2017. In addition, once the tolling period ends, Section 252.363, Fla. Stat., extends the tolled period for an additional 6 months. Therefore, pursuant to the Executive Orders and Section 252.363, Fla. Stat., any activity required for Building Permit No. 17-1560 is tolled until November 2, 2018. As such, the next required inspection for Building Permit No. 17-1560 is required to occur on or before May 1, 2019, which is 180 days after the tolling period ends. Further, the tolling period has the legal effect of extending the two-year time period of a valid permit by the duration of the tolling period. Thus Building Permit No. 17-1560 is valid until at least December 21, 2020.<sup>6</sup>

Section 90-360 of the City Code requires that written notice be provided to the permittee and contractor in the event the Chief Building Official cancels a permit. No written notice was provided to Dr. Walker or his contractor. Further, Section 90-359 of the City Code provides four conditions which must be followed in order to avoid cancellation of a permit. All of the applicable conditions were met by Dr. Walker, thus Building Permit No. 17-1560 could not be cancelled based on any of the conditions listed in Section 90-359. Likewise, as described, Resolution No. 14-316 did not expire and was not a valid basis on which to cancel the permit. Regardless, written notice was required to have been provided to Dr. Walker, but no such written notice was received. This was a violation of the City Code and fundamental due process which requires notice be provided when a government entity intends to take away private property rights.

For the reasons described, the Chief Building Official’s decision to cancel Building Permit No. 17-1560 on May 31, 2018, was invalid. The so-called “City Development Agreement” had not, in fact, expired as the Chief Building Official mistakenly believed. Further, said building permit remains valid until at least December 21, 2020, with the next required inspection to occur on or before May 1, 2019. All conditions required to keep said permit and Development

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<sup>6</sup> Permit was issued October 26, 2017, and is valid for two-years, per Sec. 90-358 of the City Code, which is October 26, 2019. The tolling period of 240-days plus the additional six-months is added to this period pursuant to Sec. 252.363, Fla. Stat., thereby extending the permit validity until at least December 21, 2020.

Agreement active and valid have been met by Dr. Walker, therefore, cancellation of the permit was invalid and unwarranted.

We respectfully request this appeal be scheduled at a mutually agreeable time for purposes of presentation of this appeal. If you should have any questions regarding this request, please do not hesitate to contact me

Sincerely,

A handwritten signature in blue ink that reads "Van D. Fischer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Van D. Fischer, Esq.  
Attorney for Dr. Richard Walker, MD

Attachments (16)

**ROOSEVELT DOCKS LLC**  
2409 N ROOSEVELT BLVD  
KEY WEST, FL 33040

Pay to the  
Order of

*City of Key West*  
*Che Howard*

**FIRST  
STATE  
BANK**

OF THE FLORIDA KEYS  
KEY WEST, FLORIDA 33040

For *Appl*

1185  
63-437670  
4

*6-8-18*

Date

CHECK NUMBER

\$ *1000-*

Dollars



Security  
Features  
Printed on  
Back

*Walt*

1185

Date: 6/19/2018 9:45:05 AM  
Receipt Number: 38125  
Amount: \$1,000.00

FOR DEPOSIT ONLY  
ACCOUNT 0100903096

6/19/2018 9:45:05 AM

REVENUE - MISCELLANEOUS - KA

Originator Receipt Number:

0

Originator Payment Date:

Payment Type:

ALL CASH RECEIPTS

Transaction Amount:

\$1,000.00

Additional Comments: roosevelt docks llc

\$1,000.00

2500 N ROOSEVELT LLC  
513 FLEMING ST STE 1  
KEY WEST, FL 33040

ALLISON JOHN R III  
PO BOX 2129  
KEY WEST, FL 33045

WALKER RICHARD C  
2407 N ROOSEVELT BLVD  
KEY WEST, FL 33040

BANANA LLC  
1000 Market St  
Portsmouth, NH 03801

CENTIENNIAL BANK  
11290 OVERSEAS HWY  
MARATHON, FL 33050

CHOATE CINDY A  
2629 GULFVIEW DR  
KEY WEST, FL 33040

ZUIDERVEEN KATHLEEN M TRUST  
6944 OAKBROOK ST SE  
GRAND RAPIDS, MI 49546

CONCH PLAZA LLC  
513 FLEMING ST STE 1  
KEY WEST, FL 33040

GROSSMAN FAMILY L L L P  
1016 FLAGLER AVE  
KEY WEST, FL 33040

GULFVIEW 2613 LLC  
117 Sand Hills Rd  
Monmouth Junction, NJ 08852

HAYES JOANNIE D H/W  
2611 Gulfview Dr  
Key West, FL 33040

HOLSONBACK JOHN  
2414 Oak Landing Dr  
Brandon, FL 33511

HOUSING AUTHORITY  
CITY OF KEY WEST  
1400 Kennedy Drive  
Key West, FL 33040

HULRGREN BRUCE W  
7367 LILAC LN  
VICTORIA, MN 55386

KEY WEST LIONS CLUB  
2405 N Roosevelt Blvd  
Key West, FL 33040

KW26 LLC  
1000 Market St  
Portsmouth, NH 03801

LEEN KEVIN J PO  
BOX 1032  
KEY WEST, FL 33041

MALPASS WILLIAM & JANIS  
JOINT REVOCABLE TRUST  
2623 Gulfview Dr  
Key West, FL 33040

MAZUREK ANDREW S  
1999 DECLARATION TRUST  
41 CAMBRIDGE DR  
OAK BROOK, IL 60523

MCGRAIL PAUL H  
2619 Gulfview Dr  
Key West, FL 33040

MILE 2 KEY WEST LLC  
PO BOX 1944  
KEY WEST, FL 33041

MMP AND LPO LIMITED PARTNERSHIP T  
C/O OUTLAW LISA P GENERAL PARTNE  
8029 CARMEL CIRCLE  
FOLEY, AL 36535

OHARA TERRY M AND DONNA F  
REV JOINT TRUST 12/21/12  
2607 Gulfview Dr  
Key West, FL 33040

RATCLIFFE CAROL A  
2609 GULFVIEW DR  
KEY WEST, FL 33040

RLJ II-F KEY WEST LLC  
3 BETHESDA METRO CTR STE 1000  
BETHESDA, MD 20814

ZYGOCKI FAMILY TRUST 5/10/2006  
C/O DAVID ZYGOCKI TRUSTEE  
476 DE HARO LANE  
FRIDAY HARBOR, WA 98250

ROOSEVELT ANNEX HOMEOWNERS' AS  
C/O KEYS ENTERPRISE  
5505 N ATLANTIC AVE STE 207  
COCOA BEACH, FL 32931

ROOSEVELT DOCKS LLC  
2407 N ROOSEVELT BLVD  
KEY WEST, FL 33040

RYSMAN PETER AND LINDA  
62 FRONT ST  
KEY WEST, FL 33040

SILVER EAGLE DISTRIBUTORS LTD  
4417 GRANADA BLVD  
CORAL GABLES, FL 33146

STATE OF FLA DOT  
1000 NW 111th Ave  
Miami, FL 33172

City Of Key West Fl -  
Behind Old Flipper Sea  
School  
PO Box 1409  
Key West, FL 33041