

# Appeal of Substantial Improvement & Substantial Damage Determination

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1413 FLAGLER, AVENUE, KEY WEST, FL 33040

## SECTION 34-132 OF THE CITY OF KEY WEST CODE OF ORDINANCES

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- When the cost of renovations and/ or repairs equals or exceeds 50% of the pre-renovated market value of the structure, the improvements are considered to be a “Substantial Improvement” under Sec. 34-132 of the Code.
- Sec. 34-132 of the Code defines “Substantial Damage” as “[d]amage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.”

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- Pre-renovated Market Value of the Structure= \$ 165,394.00
- 50% Threshold= \$82,697.00
- Cost of Improvements= \$59,660.00
  - Affirmed by Certified Building Contractor in sworn affidavit with multiple receipts & proposals attached thereto

# FEMA DESK REFERENCE

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- Method for determining the cost of improvements & the cost of repairs for purposes of a Substantial Improvement (“SI”) & Substantial Damage (“SD”) determination is governed by Section 4.4 of FEMA Desk Reference.
- Sec. 4.4.3 of the FEMA Desk Reference states that an acceptable method to determine the costs is based on “[i]temized costs of materials and labor, or estimates of materials and labor that are prepared by licensed contractors or professional construction cost estimators.”
- Contractor submitted Cost of Improvements Affidavit with detailed breakdown of the actual & estimated cost of the labor and materials needed for the improvements.

# THE FLOODPLAIN ADMINISTRATOR'S SUBSTANTIAL IMPROVEMENT DETERMINATION

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- Despite the Cost of Improvements Affidavit submitted by the contractor, the Floodplain Administrator issued an SI Determination finding that the value of the improvements = **\$114,001.00**, which is \$31,304 (68.9%) over the 50% threshold.
- The Floodplain Administrator found that “[b]ased on the City standard renovation cost value of 185<sup>sf</sup> for the 714<sup>sf</sup> of reconstruction, the improvement value is \$132k (79%).”

# METHOD USED BY THE FLOODPLAIN ADMINISTRATOR TO DETERMINE COST OF IMPROVEMENTS

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- Floodplain Administrator claims the determination was based on the “newly supplied private building value appraisal, material receipts, a site visit and *typical construction costs* in a light most favorable to the property owner.”
- Floodplain Administrator is not authorized to substitute the actual costs provided by the Contractor with his own valuation of the cost of the improvements.
  - Estimated market value can be used to determine cost of donated or discounted materials & volunteer labor.
  - Owner did not have any donated or discounted materials, or volunteer labor.

# METHOD USED BY THE FLOODPLAIN ADMINISTRATOR TO DETERMINE COST OF IMPROVEMENTS

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- Improper to attribute higher costs to materials than the actual cost of the materials the Property Owner plans to use.
  - Cost of materials vary significantly based on quality, brand & availability of the materials
  - Cost-estimating services take into account the quality of the construction when determining the value of improvements & repairs (e.g. Marshall & Swift)
  - Owner intentionally selected inexpensive materials
  - Quasi affordable housing

# THE FLOODPLAIN ADMINISTRATOR'S SUBSTANTIAL DAMAGE DETERMINATION

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- To make an SD Determination, the Floodplain Administrator must first make a determination as to the cost of the repairs.
  - Cost to repair is limited to the cost of the “work necessary to restore a damaged building to its pre-damage condition.” (FEMA Desk Reference, p. 4-4).
- Floodplain Administrator made an SD Determination without determining cost of the repairs in violation of Section 34-125(4)(b) of the Code.
  - Improperly assumed the cost of repairs = cost of the improvements.



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*Figure 2 April 30, 2019*



*Figure 13 May 22, 2019*

# 1413 FLAGLER AVENUE, KEY WEST

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Figure 14 May 22, 2019



Figure 21 July 28, 2019 - Ground floor

# 1413 FLAGLER AVENUE, KEY WEST

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*Figure 16 July 28, 2019*



*Figure 17 July 28, 2019*

# 1413 FLAGLER AVENUE, KEY WEST

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*Figure 18 July 28, 2019*



*Figure 3 July 28, 2020*