



# Appeal of Floodplain Determinations for 1413 Flagler Avenue

National Flood Insurance Program  
Community Rating System





## Floodplain Administrator: Scott G. Fraser

- Served in this position the last decade
- Certified Floodplain Manager
  - FEMA Advanced Floodplain Management I
  - FEMA Advanced Floodplain Management II
  - FEMA Advanced Floodplain Management III
- Performed 400 – 500 Substantial Improvement/Damage Assessments

# **Details, Jurisdiction & Definitions**

**Appealable to Circuit Court**

**Please hold the questions until the end.**



# Appeal

## Substantial Improvement/Damage Determinations

Sec. 34-129. - Variances and appeals.

(1) *General.* The planning board shall hear and decide on requests for variances from the strict application of this ordinance. Pursuant to F.S. § 553.73(5), the planning board shall hear and decide on requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

(2) *Appeals.* The **city commission** shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or **determination** made by the floodplain administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of the city commission may appeal such decision to the circuit court, as provided by Florida Statutes.

# Sec. 34-125. - Duties and powers of the floodplain administrator.

(4) **Substantial improvement and substantial damage determinations.** For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, shall:

- (a) **Estimate the market value**, or require the applicant to submit appraisals - not older than one year - of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (b) **Compare the cost** to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) **Determine** and document whether the proposed work constitutes **substantial improvement** or repair of **substantial damage**; for proposed work to repair damage caused by flooding, the determination requires evaluation as specified in the definition of "substantial damage"; and
- (d) **Notify the applicant** if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the Florida Building Code and this ordinance is required.

# Controlling Legislation/Codes

- **Federal:**

- 44 CFR § 60.3 - Floodplain management criteria for flood-prone areas
  - Ensures our participation in the National Flood Insurance Program (NFIP) – (6 years)
  - CRS savings prerequisite – As of five days ago = \$3.3 million (nearly \$500/policy)

- **State:**

- Florida Building Code 6th Edition – Chapter 1612

- **City:**

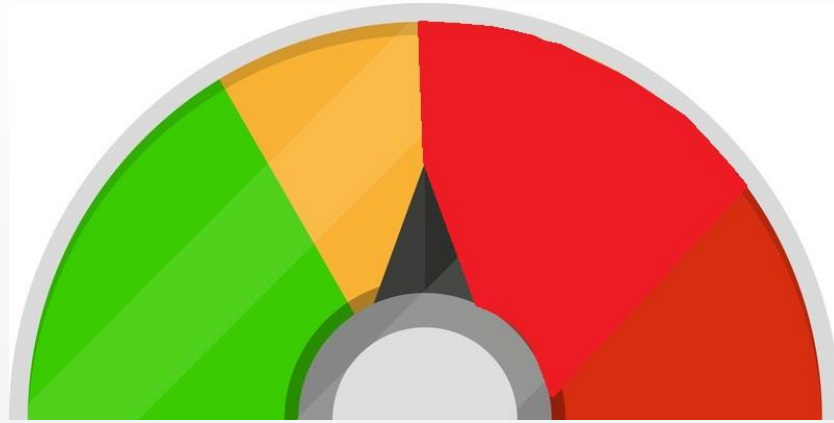
- Comprehensive Plan
  - Policy 1A-1.5.1: - Compliance with FEMA Standards.
    - Note: HARC statement no Contributing Historic Structures exist on this parcel.
  - Objective 6-1.3: - Maintenance of Floodplain
    - Policy 6-1.3.1: - Enforce Policies to Maintain Floodplain.
- Chapter 34 – Floods

# Definitions: “50% Rule”

## **Substantial Improvement** (*Building Code*) :

Any *repair*, reconstruction, rehabilitation, alteration, *addition* or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained *substantial damage*, any *repairs* are considered substantial improvement regardless of the actual *repair* work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the *building official* and that is the minimum necessary to assure safe living conditions.
2. Any *alteration* of a historic structure provided that the *alteration* will not preclude the structure’s continued designation as a historic structure.



**50% is the Margin**



# No Allowance for “Purpose” nor “Ownership”

- Non-profit (*Habitat for Humanity*)
- Low income housing (*Church on Flagler Ave.*)
- Workforce housing
- Governmental construction

# 50% Rule – NFIP/CRS Requirement

Scott,

NFIP-participating communities are required to conduct substantial damage determinations and substantial improvement determinations to ensure that properties are in compliance with the local flood ordinance. Specifically, the federal regulations and the Florida Building Code make specific reference to “new construction” and “substantial improvements” that must meet elevation requirements as established on Flood Insurance Rate Maps and as specified in ASCE 24.

The consequences of permitting non-conforming or non-compliant structures to be substantially improved without complying with elevation requirements include the community being retrograded in the Community Rating System to a Class 10 (no savings discount), and will usually include FEMA placing the community on probation which requires the compliance issue to be remedied before FEMA may restore the community to good standing in the NFIP and eligible to reapply to participate in the Community Rating Systems. FEMA has directed State NFIP Coordinating Offices during current and future State-FEMA operating agreements to make programmatic actions that ensure that communities are appropriately conducting substantial damage and improvement analyses consistently and State must work to ensure that communities enforce their regulations.

Please let me know if you should need additional clarification on this matter.

Thanks, Steve

Steve Martin, CFM, CPM

State NFIP Coordinator/State Floodplain Manager

# Site Description





# Special Flood Hazard Area / AE-6 Flood Zone

## National Flood Hazard Layer FIRMette



### Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

<b>SPECIAL FLOOD HAZARD AREAS</b>	Without Base Flood Elevation (BFE) Zone A, V, AE
	With BFE or Depth Zone AE, AO, AH, VE, AR
	Regulatory Floodway
<b>OTHER AREAS OF FLOOD HAZARD</b>	0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
	Future Conditions 1% Annual Chance Flood Hazard Zone X
	Area with Reduced Flood Risk due to Levee. See Notes, Zone X
	Area with Flood Risk due to Levee Zone D
<b>OTHER AREAS</b>	Area of Minimal Flood Hazard Zone X
	Effective LOMRs
	Area of Undetermined Flood Hazard Zone D
<b>GENERAL STRUCTURES</b>	Channel, Culvert, or Storm Sewer
	Levee, Dike, or Floodwall
<b>CROSS SECTIONS</b>	Cross Sections with 1% Annual Chance Water Surface Elevation
	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
<b>OTHER FEATURES</b>	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature
<b>MAP PANELS</b>	Digital Data Available
	No Digital Data Available
	Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

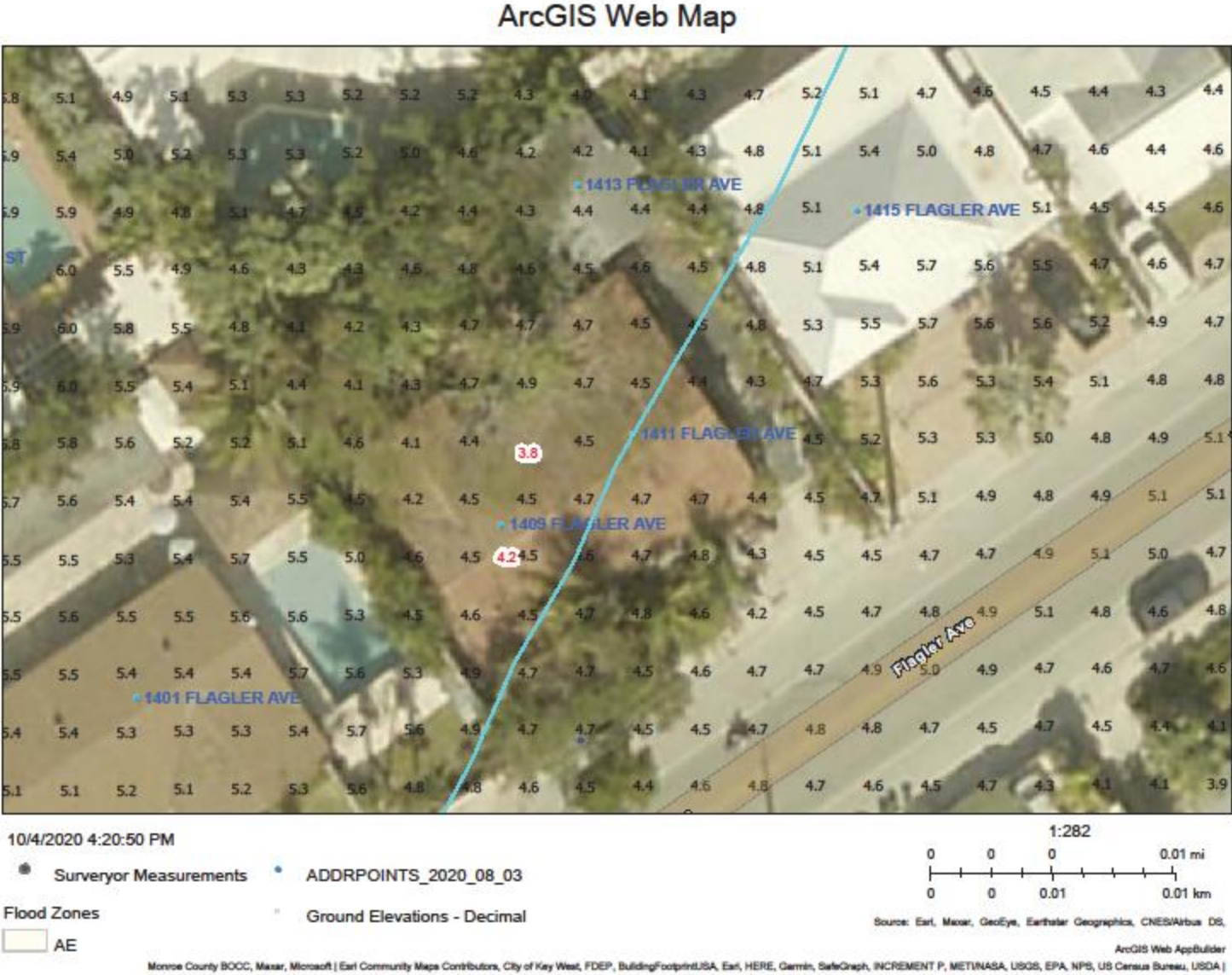
The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 9/17/2019 at 7:32:50 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

# Building is Below the Flood Level

LiDAR Ground Measurements

+4.4' NGVD



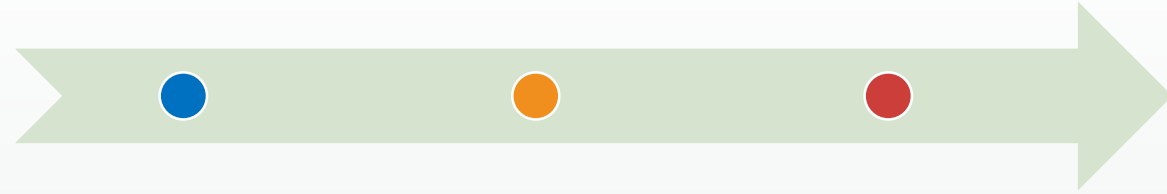


# Elevation Certificate Measurements for Adjacent Building

SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)			
C1. Building elevations are based on: <input type="checkbox"/> Construction Drawings* <input type="checkbox"/> Building Under Construction* <input checked="" type="checkbox"/> Finished Construction			
*A new Elevation Certificate will be required when construction of the building is complete.			
C2. Elevations – Zones A1–A30, AE, AH, A (with BFE), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO. Complete Items C2.a–h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.			
Benchmark Utilized: <u>BASIC</u> Vertical Datum: <u>NGVD 1929</u>			
Indicate elevation datum used for the elevations in items a) through h) below.			
<input checked="" type="checkbox"/> NGVD 1929 <input type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____			
Datum used for building elevations must be the same as that used for the BFE.			
		Check the measurement used.	
a) Top of bottom floor (including basement, crawlspace, or enclosure floor)	<u>9.4</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters
b) Top of the next higher floor	<u>N/A</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
c) Bottom of the lowest horizontal structural member (V Zones only)	<u>N/A</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
d) Attached garage (top of slab)	<u>N/A</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments)	<u>10.3</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters
<b>f) Lowest adjacent (finished) grade next to building (LAG)</b>	<b><u>4.2</u></b>	<b><input checked="" type="checkbox"/> feet</b>	<input type="checkbox"/> meters
g) Highest adjacent (finished) grade next to building (HAG)	<u>5.6</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support	<u>4.6</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters

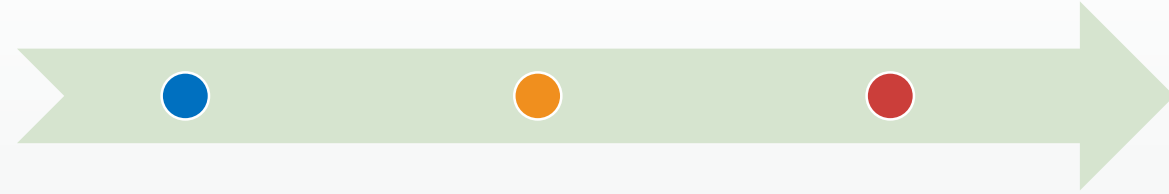
No E.C. for rear building, as construction continued unpermitted.

# Chronology



- February 7, 2019 – Building permit was issued for: *"Remove existing roofing on accessory structure and replace plywood as necessary, replace fascia. Install Grace Ice and Water shield and V-Crimp panels. 530 sq. ft."* [#BLD2019-0444]
- February 8, 2019 – Building permit issued for: *"Demo interior and fixtures for accessory structure for exploratory purposes."* [#BLD2019-0471]

# Chronology



- March 18, 2019 – Building permit issued to replace the mid-level and top tie beams.









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05-01-2019 10:58:45 AM GPS X= 24.552216 Y= -81.785126









04-30-2019 11:08:11 AM GPS X= 24.552109 Y= -81.785067





04-30-2019 02:16:46 PM GPS X= 24.551941 Y= -81.785028









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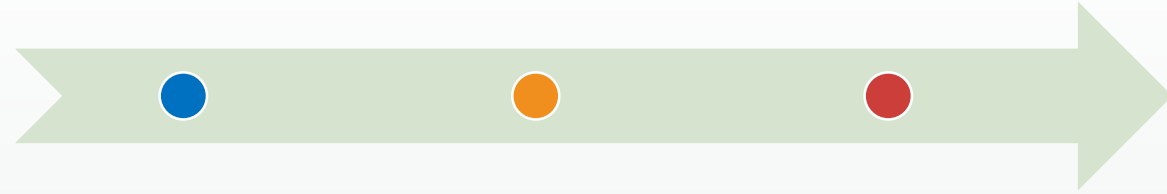






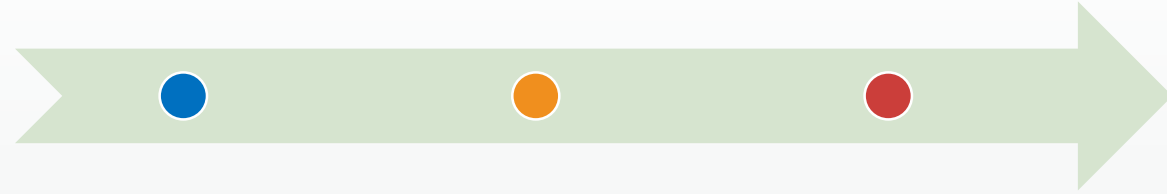


# Chronology



- April 30, 2019 – Following complaints, the Floodplain Administrator conducted a site visit.
  - Permits only issued for roofing, exploratory demo & tie-beams
  - Notice given, building flagged for Substantial Improvement review.
    - When renovation permits are requested.

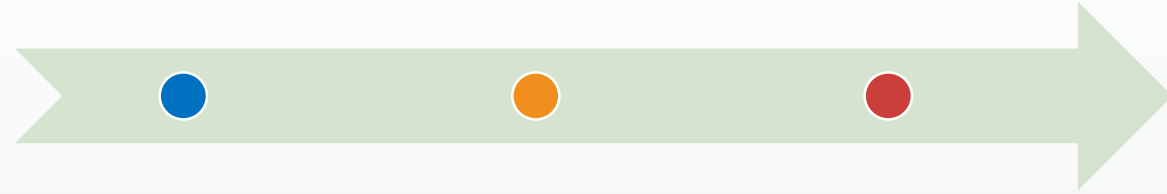
# Chronology



- September 3, 2019 (3 months later) - Permit Application was submitted for [#BLD2019-3125] : *"Renovations to upstairs & downstairs units new kitchen bath and bedroom replace windows & entrance doors."*
- No elevation mentioned



# Chronology



- September 17, 2019 – Floodplain Administrator conducts first 50% analysis.
  - = 127.4%
  - *Recommend Owner obtain private appraisal*

# 50% Formula

- **Building Value**
- **Improvements Value**
- **% Building is being improved = ?**



# 50% Formula

- **Building Value**

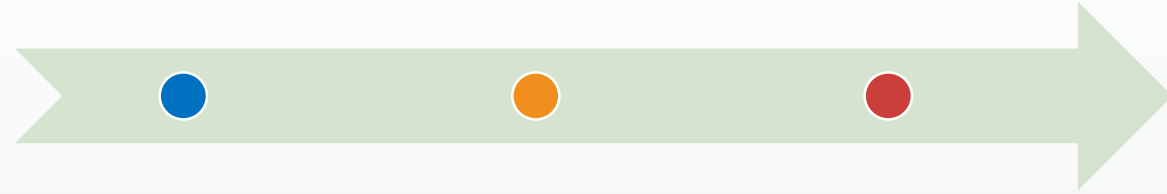
- Adjusted Property Appraiser's (APA) value
  - PA's building value +15%
- Private appraisal supersedes APA value
  - Greater building value increases 50% threshold.

# 50% Formula

- **Value of Improvements**
  - Reasonable market rates
  - Qualified independent construction cost estimator
  - Chief Building Official's estimate

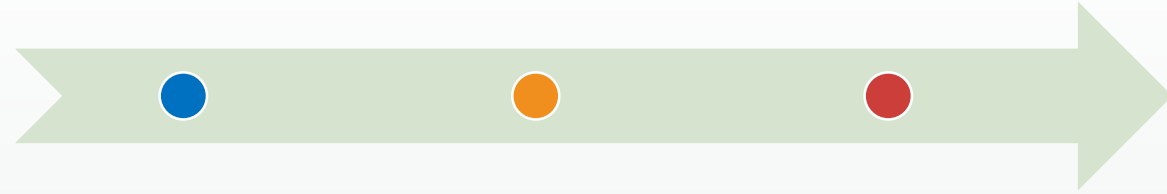


# Chronology



- October 23, 2019 (5 weeks later) – New Building Permit Revision [#BLD2019-3125]:  
*"downstairs unit for storage only, upstairs apartment to remain revise project cost."*
  - Ready to issue permit (still are); 50% no longer matters.
    - However:
      - Plans still show ground floor apartment.
      - Non-Conversion Agreement required from Owner.
        - To date, it's never been submitted.

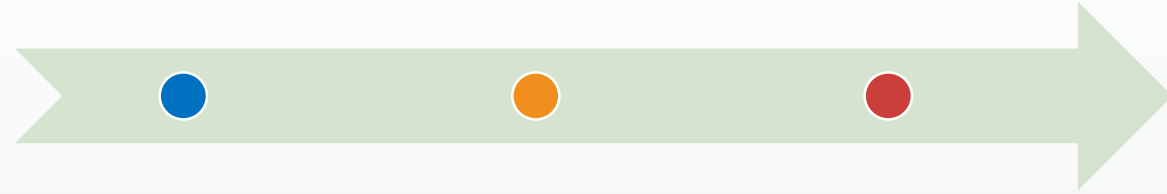
# Chronology



- May – July 2020
  - Chief Building Official (CBO) reviews improvement cost claims.
    - Cost of tie-beam repairs misrepresented.
    - Request for roof/porch construction plans denied.
      - Owner claims CBO has no right to request.
        - CBO asserts Sec. 107 of the Florida Building Code – Submittal Documents
  - Other renovation costs omitted.
    - CBO estimates unsubmitted costs.

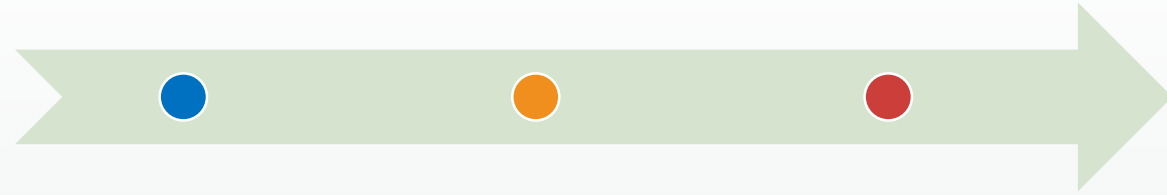


# Chronology



- CBO estimates unsubmitted costs.
  - Contractor removes
    - Central air (plug-in appliances aren't included in 50% calcs.)
    - New doors (will re-use old doors).
      - Later discovered new doors had already been installed.

# Chronology

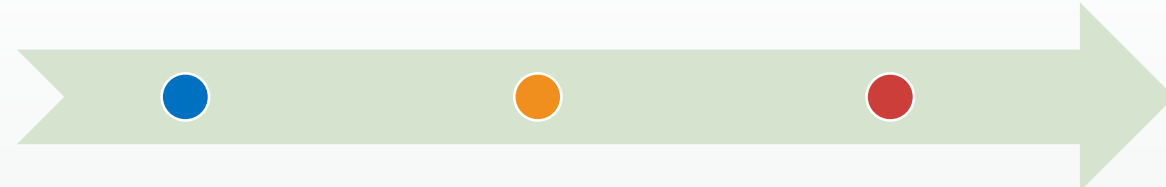


- August 13, 2020: Owner consents to requested site visit.



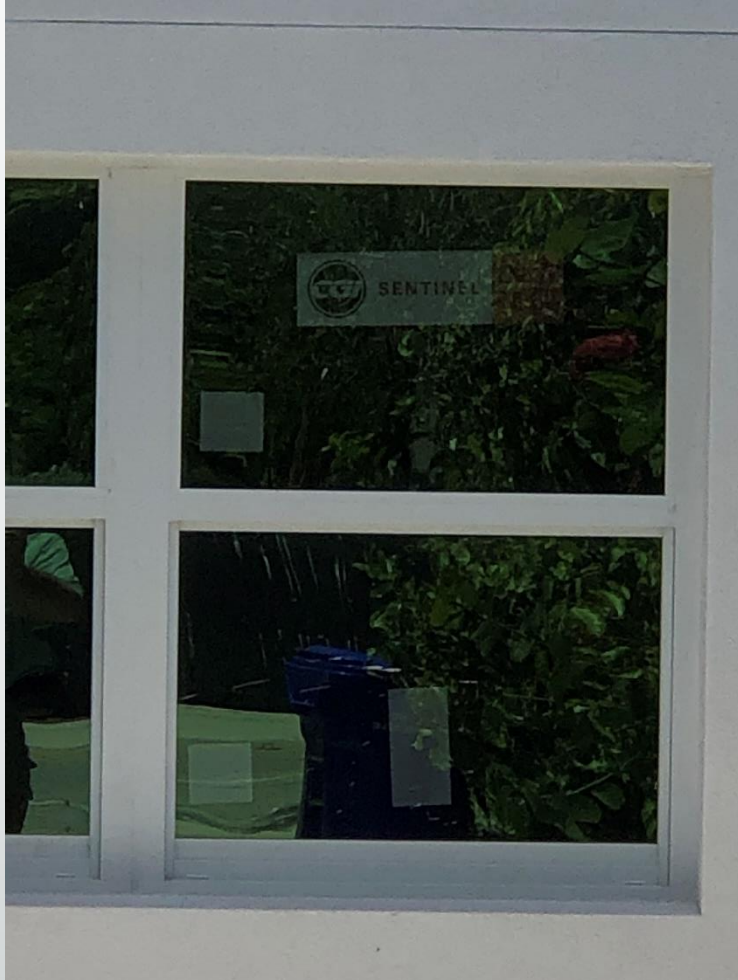
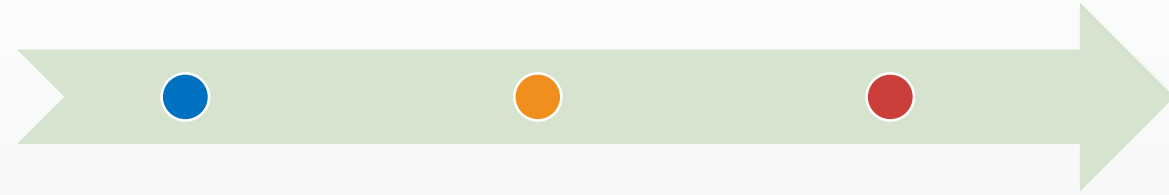


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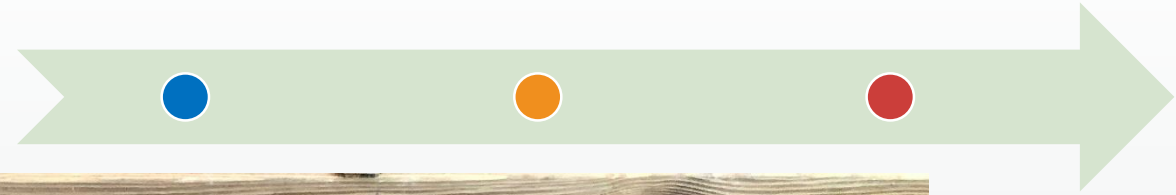




# Chronology

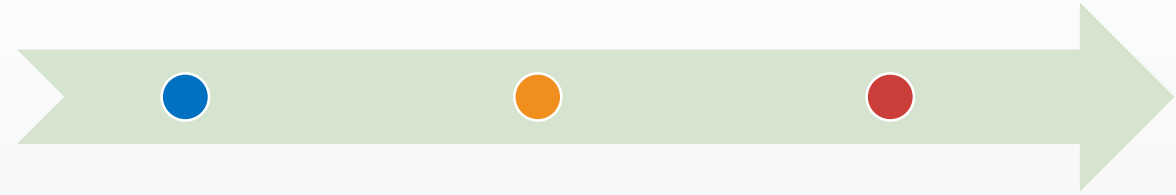


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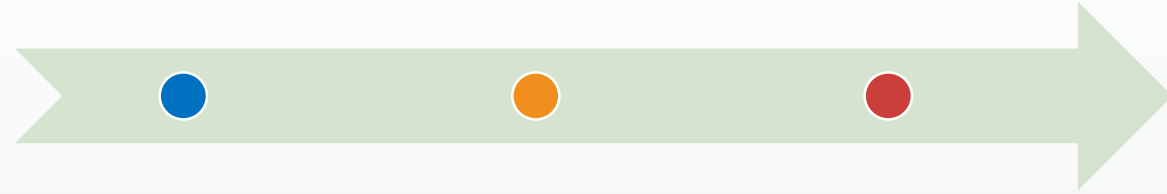


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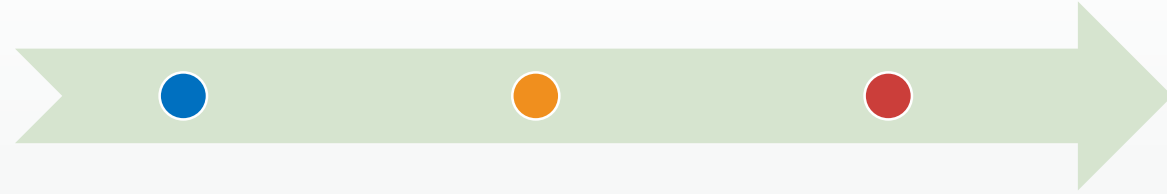


# Chronology



- **Floodplain Administrator conducts second 50% analysis**
  - New private appraisal submitted.
    - Building value increases from \$121<sup>k</sup> to \$165<sup>k</sup>
  - Value of improvements drops from \$155<sup>k</sup> to \$114<sup>k</sup>
  - Substantial Improvement drops from 127% to 69%
    - \$31<sup>k</sup> over

# Chronology



- **Substantial Damage Determination**
  - “Accumulated deterioration or decay contributes toward substantial damage.”
  - All repairs must be toward flood mitigation (demolition/elevation).

# Summary

- As reviewers, we've contorted ourselves to the max limits.
  - At the very edge of our NFIP & CRS responsibilities
- Stretched the Substantial Improvement process as far as it can go.
- Dealt with
  - Repeated misrepresentations of costs
  - Document refusals
  - Continued un-permitted construction
- Complaints of disparate treatment from other contractors

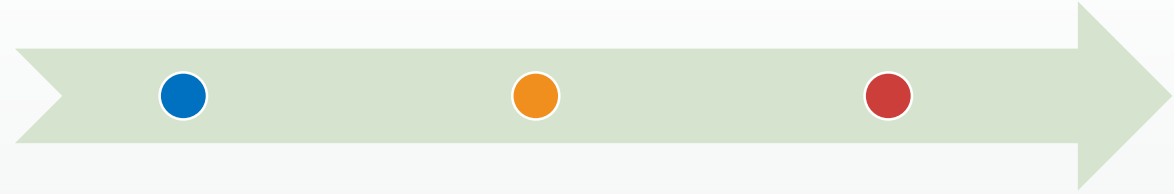


# Time to Elevate was then...

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# Chronology



**\$31k over**

# Chief Building Official