



2320 Patterson Ave.  
Appeal of Substantial  
Improvement  
Determination

Passero Development LLC



## Significant Events in Order

- 1) Owner applies for building permits. Building Department requires that an appraisal and a schedule of values with cost of work to be completed be submitted.
- 2) Appraisal and schedule of values with \$135,000 worth of work detailed submitted to Building Department. Appraisal determined value of structure at \$362,295 allowing up to \$181,147.50 of improvements.
- 3) Building Permits BLD2021-0584 (interior/exterior renovation), BLD2022-0616 (roofing), BLD2022-0722 (HVAC), BLD2022-0725 (electrical) and BLD2022-1053 (plumbing) issued.
- 4) Improvements are made to house and completed by January 2023.
- 5) Owner notified that Building Department refuses to close building permits.
- 6) Substantial Improvement Determination (using building value from MCPA) issued requiring that the house be demolished or elevated above base flood elevation.

# Building Department Cannot Issue Permits Based on Appraisal and then Deny the Appraisal After Work is Completed

The applicant provided the City with a private appraisal dated March 17, 2021; this appraisal was not acceptable due to the intention of the appraisal being for mortgage financing and not providing a current depreciated value of the structure. A second private appraisal, dated February 11, 2022, was submitted to City staff, valuing the depreciated value of the structure at \$467,206. This appraisal was accompanied by a schedule of values and materials that did not meet or exceed 50% of the depreciated value. Based upon the second appraisal, coupled with the schedule of values and materials, BLD2022-0584 was approved with conditions; the conditions include strict adherence to the submitted schedule of value, the use of materials and finishes identified in the schedule of materials, a restriction on the conversion of the garage to habitable space, and a restriction of addition or expansion of any wall.

from City staff concerns with the cost of renovations and exceedance of the approved scope of work, Mr. Cole advised that the private appraisal dated February 11, 2022, is insufficient due to the effective date of the appraisal falling after the start of renovations. Additional issues concerning both private appraisals were later identified by Mr. Cole in Exhibit C Appraisal Checklist for SI/SD Determinations. Therefore, in accordance with the definition of market value as defined in Sec. 34-132 of the Code of Ordinances, the market value for substantial improvement analysis shall be derived from the tax assessment value adjusted to approximate market value by a factor provided by the property appraiser. Pursuant to the 2021 property record card, the value of the structure during tax year 2021 was \$71,147, plus an additional 15%, \$10,672.05, providing a \$81,107.58 total market value for the structure before improvements started.

Building department issues permits for \$135,000 of work as approved in the schedule of values and based upon the appraisal.

Work on the house is completed.

Then, Substantial Improvement Determination issued requiring Owner to demolish or elevate the house. Determination states appraisals denied and County property appraiser value of structure \$71,147 is utilized in substantial improvement 50% rule analysis.

# Building Department Cannot Issue Permits Based on Appraisal and then Deny the Appraisal After Permitted Work is Completed

The Building Department is precluded from changing their position on an appraisal after building permits are issued, and owner relies on the original position by spending time and money on the structure.

It is unjust and wasteful public policy to permit significant and expensive work to be done on a house only to later change position on a premise of the permit and require the demolition of the house.

Furthermore, the appraisal meets all codified standards and there is no basis for denial of the appraisal.





# FEMA 50% Rule

$$\frac{\text{Cost of Improvements (including materials, labor, etc.)}}{\text{Market Value of the Structure Before Improvements Made}} \leq 50\%$$

If the Cost of Improvements exceed 50% of the Market Value of the Structure, it is considered a “Substantial Improvement” requiring the structure to be demolished or elevated above base flood elevation.



# Appraisals are the Preferred Method to Determine the Market Value of a Structure

## 4.5.1 Professional Property Appraisals

Property appraisals that are prepared by a professional appraiser according to standard practices of the profession are the most accurate and reliable method for determining market value. Professional appraisers should be qualified to appraise the type of property (e.g., residential, commercial, industrial) and should be licensed in the State or community in which the property is located. Most States require professional property appraisers to be licensed and to perform valuation work in accordance with the quality control standards found in the *Uniform Standards of Professional Appraisal Practice*, which are maintained and administered by The Appraisal Foundation (<http://www.appraisalfoundation.org>). In those States that require use of the standards, local officials should check that market value appraisals prepared to support SI/SD determinations have a statement regarding conformance with this standard.

\* Snip retrieved from Section 4.5.1 of FEMA P-758 Substantial Improvement/Substantial Damage Desk Reference

# 2 Professional Appraisals Submitted – No Substantial Improvement if Either Appraisal Market Value is Accepted

OPINION OF SITE VALUE				= \$	375,000
DWELLING	2,326	Sq.Ft. @ \$	295.00	= \$	686,170
	0	Sq.Ft. @ \$		= \$	
<b>Short Lived Items</b>				= \$	15,000
Garage/Carport		Sq.Ft. @ \$		= \$	
Total Estimate of Cost-New				= \$	701,170
Less	Physical	Functional	External		
Depreciation	338,875			= \$(	338,875)
Depreciated Cost of Improvements				= \$	<b>362,295</b>
"As-is" Value of Site Improvements				= \$	25,000
<b>INDICATED VALUE BY COST APPROACH</b>				= \$	<b>762,295</b>

OPINION OF SITE VALUE				= \$	320,000
DWELLING	1,962	Sq.Ft. @ \$	550.00	= \$	1,079,100
	0	Sq.Ft. @ \$		= \$	
		Sq.Ft. @ \$		= \$	
		Sq.Ft. @ \$		= \$	
		Sq.Ft. @ \$		= \$	
Garage/Carport	401	Sq.Ft. @ \$	105.00	= \$	42,105
Total Estimate of Cost-New				= \$	1,121,205
Less	Physical	Functional	External		
Depreciation	653,999			= \$(	653,999)
Depreciated Cost of Improvements				= \$	<b>467,206</b>
"As-is" Value of Site Improvements				= \$	0
				= \$	
				= \$	
<b>INDICATED VALUE BY COST APPROACH</b>				= \$	<b>787,206</b>

APPRAISER Mark MacLaughlin, Cert Gen RZ 3053  
 Signature   
 Name Mark MacLaughlin, Cert Gen RZ 3053  
 Company Name All Keys Appraisal Company, Inc  
 Company Address PO Box 2391  
 Key West, FL 33045-2391  
 Telephone Number (305) 296-9255  
 Email Address allkeysappraisal@aol.com

APPRAISER  
  
 Appraiser Name: Craig Martin  
 Company: Barefoot Appraisal  
 Phone: (305) 293-6657 Fax:  
 E-Mail: craig@barefootappraisal.com





# FEMA Guidelines Say Tax Assessor Valuations Have Limitations

## 4 MAKING SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS

### 4.5.2 Adjusted Assessed Value

Generally, assessed values or property assessments are determined by the State or local taxing or assessment authority. The assessor's job is to independently estimate the market value of real property. Assessments usually provide both land value and value of improvements, and are used as the basis for determining property taxes. Assessments are revised or adjusted periodically to account for changes in property values. **The use of assessed value has some limitations that, if not considered and accounted for, can produce erroneous estimates of market value.** These limitations are:

- **Appraisal cycle.** How often are the appraisals done and when was the date of the last appraisal? Market value estimates can be grossly outdated if the cycle is long and the property happens to be in the latter stage of its cycle and has not been appraised for many years.
- **Land values.** In most cases, land values and the value of improvements (structures) thereon will be assessed separately and listed as such in the tax records. In cases where they are not distinguished, a determination of the value of the land will have to be made and subtracted from the total assessed value.
- **Assessment level.** States and local taxing authorities vary in assessment levels (an established statutory ratio between the assessor's estimate of value and the true fair market value). For example, many States use an assessment level of 90 percent. In this case, the assessed values will underestimate market values by 10 percent. In cases where the assessment level is unacceptably low or where the projected ratio of cost of repair to market value is close to 50 percent, adjustments for assessment level must be made.

“The use of assessed value has some limitations that, if not considered and accounted for, can produce erroneous estimates of market value.”

\* Snip retrieved from Section 4.5.2 of FEMA P-758 Substantial Improvement/Substantial Damage Desk Reference



# Monroe County Property Appraiser Building Value is Erroneous

Instead of the 2 appraisals submitted, the Substantial Improvement Determination utilizes Monroe County Property Appraiser building value as the market value of the building

Year	Land Value	Building Value	Yard Item Value	Just (Market) Value
2022	\$396,418	\$83,331	\$4,773	\$484,522
2021	\$302,396	\$71,147	\$4,773	\$378,316
2020	\$299,855	\$177,869	\$4,773	\$482,497
2019	\$294,772	\$180,785	\$4,773	\$480,330
2018	\$254,114	\$183,700	\$4,745	\$442,559

The MCPA building value of \$71,147 is unreasonable as it comes out to \$28.84 per square foot of the building

$$\mathbf{\$71,147 / 2,650\ sf = \$28.84\ per\ sf}$$

\* Snip retrieved from 2320 Patterson Ave Property Record Card

Building ID	4048
Style	GROUND LEVEL
Building Type	S.F.R. - R1 / R1
Building Name	
Gross Sq Ft	2650
Finished Sq Ft	1962
Stories	1 Floor

# No Substantial Improvement if Appraisal is Utilized in 50% Rule Analysis

Method to Determine Market Value of Building	Market Value Determined	50% of Market Value Determined	Improvements as a % of Market Value Determined
All Keys Appraisal dtd 3/17/2021	\$362,295.00	\$181,147.50	\$163,220/\$362,295= 45%
Barefoot Appraisal dtd 2/11/2022	\$467,206.00	\$233,603.00	\$163,220/\$467,206= 35%
Monroe County Property Appraiser 2021 Building Value	\$71,147 + 15% = \$81,819.05	\$40,909.53	\$163,220/\$81,819.05= 199%

Chart assumes \$163,220 in improvements as alleged in City's Substantial Improvement Determination



# Appraisals Meet City Code Appraisal Requirements and Should be Accepted

(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;

- City Code Section 34-125(4)(a) substantial improvement appraisal requirements are met by the appraisals:

- 1) Appraisal not older than one year
- 2) Appraisal prepared by a qualified independent appraiser
- 3) Appraisal appraises value of building before start of construction of proposed work



## Appraisals Meet City Code Appraisal Requirements and Should be Accepted

- Section 34-125 of the City Code sets the duties of the City floodplain administrator. The duties include the review of an appraisal of market value of a structure.
- The Memorandum from the Building Department states that the Florida Division of Emergency Management (FDEM) staff, Mr. Cole, identified issues with the private appraisals. Mr. Cole does not have authority to accept or reject appraisals of a building in the City of Key West. Mr Cole referenced uncodified appraisal standards that property owners and appraisers were not aware of. Mr. Cole does not have authority to accept or reject appraisals of a building in the City of Key West. Furthermore, apparently Mr. Cole was not consulted until after the building permits were issued and the work was completed.



# No Substantial Improvement if Appraisal is Utilized in 50% Rule Analysis

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Chart assumes \$163,220 in improvements as alleged in City's Substantial Improvement Determination

# Conclusion

- Once building permits were issued based on an appraisal and work was completed, the building Department cannot deny the appraisal and reset the market value of the structure.
- The appraisals submitted reflect a more accurate market value of the structure than data from tax assessor, and there is no basis in the City Code for the denial of the appraisals.
- The 50% rule is not violated if an appraisal is accepted.
- We request that the substantial improvement determination be overturned so that the house does not have to be demolished or elevated.

