

SPECIAL MAGISTRATE-VARIANCE/SPECIAL EXCEPTION/CODE ENFORCEMENT MEETING AGENDA

Monday, September 25, 2023 at 2:00 PM Commission Chambers - 300 Municipal Drive

Meetings will be televised on Spectrum Channel 640 and YouTube Streamed on the City's Website.

1. CALL TO ORDER

2. PUBLIC COMMENT

Public participation is encouraged. If you are addressing the Special Magistrate, step to the podium and state your name and address for the record. Please limit your comments to three (3) minutes and do not include any topic that is on the agenda.

Public comment on agenda items will be allowed when they come up.

For any quasi-judicial hearings that might be on the agenda, an affected person may become a party to this proceeding and can be entitled to present evidence at the hearing including the sworn testimony of witnesses and relevant exhibits and other documentary evidence and to cross-examine all witnesses by filing a notice of intent to be a party with the Community Development Director, not less than five days prior to the hearing.

3. SPECIAL MAGISTRATE STATEMENT

4. ADMINISTRATION OF OATH TO RESPONDENTS/WITNESSES

5. NEW BUSINESS

6. OLD BUSINESS

- A. Case #2023.3600 414 140th Ave E., Madeira Beach FL- Hearing on Motion for Rehearing, Motion for Clarification, and Motion for Extension of Time for Compliance.
- B. Case #2022.3467 13436 Boca Ciega Ave., Madeira Beach- Consideration of Affidavit of Compliance

7. ADJOURNMENT

One or more Elected or Appointed Officials may be in attendance.

Any person who decides to appeal any decision of the Special Magistrate with respect to any matter considered at this meeting will need a record of the proceedings and for such purposes may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The law does not require the minutes to be transcribed verbatim; therefore, the applicant must make the necessary arrangements with a private reporter or private reporting firm and bear the resulting expense. In accordance with the Americans with Disability Act and F.S. 286.26; any person with a disability requiring reasonable accommodation to participate in this meeting should call Linda Portal, Community Development Director at 727-391-9951, ext. 255 or fax a written request to 727-399-1131.

CODE ENFORCEMENT SPECIAL MAGISTRATE CITY OF MADEIRA BEACH

CITY OF MADEIRA BEACH,

CASE NUMBER: 2023.3600

Petitioner,

VS.

SANTOS, MERCEDES and VOLPE, THERESA 414 140th Ave. E. Madeira Beach, FL 33708,

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IMPOSING FINE

THIS CAUSE came on to be heard for public hearing before the undersigned Special Magistrate at 2:00 p.m., on July 31, 2023, after due notice to the Respondents, and the Special Magistrate having heard testimony under oath, received evidence, received additional briefing from the City and the Respondents, having considered the Request for Judicial Notice submitted by the City, and otherwise being fully advised in the premises, hereby finds as follows:

Findings of Fact:

- 1. The City was represented by the City Attorney, and Grace Mills, and Frank Desantis provided testimony on behalf of the City.
- 2. Leslie Conklin, Esq., appeared on behalf of the Respondents, as counsel for the Respondents, and Craig Clark and Theresa Volpe provided testimony on behalf of the Respondents.
 - 3. No one provided public comment.
- 4. The property in question is located at 414 140th Ave. E., Madeira Beach, Florida 33708 ("Property"). The legal description for the Property is as follows:

FINN SHONTZ REPLAT LOT 2

5. Proper notice was served upon the Respondents via certified mail, regular mail, posting or hand delivery in accordance with Chapters 162 and 166, *Florida Statutes*, and both Respondents appeared in person at the hearing.

6. The Respondents were notified that Respondents were in violation of the following section of the Code of Ordinances of the City of Madeira Beach to wit:

Sec. 86-52.- When Required.

A person, firm or corporation shall not construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or erect, or construct a sign, or install or alter fire extinguishing apparatus, elevators, engines, steam boiler, furnace, incinerator, or other heat producing apparatus, plumbing, mechanical or electrical equipment or any appurtenances, the installation of which is regulated by the land development regulations or other sections of the Code until a permit has been issued by the building official. When the cost of repair or modification does not exceed \$500.00, does not result in a structural change, and does not require an inspection, a permit need not be issued by the building official. No permit is required for uncovered flat slabs of no greater than 50 square feet, for work of a strictly cosmetic nature (painting, wallpapering, carpeting, kitchen cabinets, etc.) or roof work less than \$100.00 in value.

- 7. The City withdrew the violation of Sec. 110-177 at the hearing and, as such, the only violation at issue is Sec 86-52.
- 8. The Respondents essentially argue that the first-floor improvements were in place at the time they purchased the home and were either permitted, did not require a permit under the applicable codes or ordinances in effect at the time the improvements were put in place, or that the improvements were grandfathered-in and, therefore, cannot be a violation of the Sec. 86-52.
- 9. There was no evidence that a building permit was ever pulled for the improvements shown on the video recording in evidence at the hearing. There is nothing in the chain of title, such as a notice of commencement, to indicate a contractor was hired to do the work that the City alleged was unpermitted.
- 10. The Pinellas County Property Appraiser records indicate that the first floor is a garage finished with a gross area of 923 feet and a lower area finished consisting of 433 square feet. The video recording in evidence shows much more extensive improvements over a greater area.
- 11. The video and photographic evidence at the hearing showed extensive improvements on the first floor including two finished bedrooms, a kitchen, hot water heater, HVAC system, a bathroom and more.
- 12. Based on the testimony of Mr. Desantis, there were numerous life-safety issues with the improvements including, but not limited to, the two bedrooms on the first floor do not have a secondary egress or operating smoke alarms, there was an unpermitted water heater installed, there exists improper electrical wiring and plumbing throughout the first floor, there were multiple penetrations or openings between the first and second floors, there is a washer and dryer within a closet without a proper dryer venting system, and an unpermitted air handler.

- 13. There is evidence that the first floor was used by occupants as a living space and for habitation in the past.
- 14. The violations set forth above existed as of the date of the Notice of Violation herein and at all times subsequent thereto up to the date of the hearing.
- 15. Based on the nature of the violations, and the life safety issues raised by the City, a reasonable period of time for correcting the above violation and bringing the Property into compliance is thirty (30) days from the date of the Order.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

- 16. Both the City and Respondents were asked to provide post-hearing briefs, and did provide such briefs as to the issue of whether Florida law allows for grandfathering in situations where the issue is non-compliance with buildings codes or life safety issues. There appears to be a dearth of case law on that particular point but case law was provided dealing with grandfathering of uses and the prohibition of grandfathering of issues that arise under the Florida Building Code.
- 17. Sec. 86-52 of the City of Madeira Beach Code of Ordinances was adopted in 1983 and applies to the Property.
- 18. Although the use of the first floor of the Property (i.e., as a dwelling) may very well be a grandfathered use, the issue in this case is whether the improvements that do not meet the current building code and present life safety issues can also be considered to be "grandfathered." Based on the case law presented, they cannot.
- 19. The City has met its burden to prove that no building permit was issued for the improvements and that a building permit was required by the applicable statutes, codes and ordinances. There is no grandfathering provision under the City of Madeira Beach Code of Ordinances that would exempt the unpermitted construction work and the life safety issues that currently exist on the Property from the requirement of obtaining a permit. There is also substantial and competent evidence that the improvements, as they existed at the time of the hearing, present numerous life safety issues.
- 20. As such, the Respondents, and the Property at the above-mentioned location, are found to be in violation of Sec. 86-52 of the Code of Ordinances of the City of Madeira Beach.
- 21. The Respondents shall correct the above stated violation within 30 days, by taking the remedial action as set forth in the Notice of Violation, and stated on the record at the hearing, which is to get an after the fact building permit for the improvements and work done on the first floor, or remove all unpermitted work so that the structure is fully code compliant and the life safety issues no longer exist.

- 22. If the Respondents fail to timely comply with the remedial action set forth above, a fine shall be imposed in the amount of \$250.00 per day for the violation set forth in Paragraph 6 above for each day the Respondents have failed to correct the violation after 30 days, and the fine shall continue to accrue until such time as the Property is brought into compliance.
- 23. The Special Magistrate does hereby retain jurisdiction over this matter to enter such other and further orders as may be just and proper.

DONE AND ORDERED this 28th day of August, 2023.

But n. Valdes
Special Magistrate

A true and correct copy of this Order was delivered by certified mail, regular mail and electronic mail to: Mercedes Santos and Theresa Volpe, 414 140th Ave., E., Madeira Beach, FL 33708; Mercedes Santos and Theresa Volpe, 1745 Wesley Ave., Evanston, IL 60201; by electronic mail to Leslie Conklin, Esq., 1433 S. Fort Harrison Ave., Ste. B., Clearwater, Florida 33756 (conklines@yahoo.com); and Thomas Trask, Esq. (tom@cityattorneys.legal); and by U.S. Mail and e-mail transmission to the City of Madeira Beach, Clara VanBlargan, 300 Municipal Dr., Madeira Beach, Florida 33708, on this 28th day of August, 2023.

But n. Valdes

APPEALS

An aggrieved party, including the local governing body, may appeal a final administrative order of a Special Magistrate to the circuit court. Such an appeal shall not be a hearing de nova but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed. Ss. 162-11.

DSK Law Group 609 W. Horatio St. Tampa, FL 33606



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RETURN RECEIPT (ELECTRONIC)

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Total Postage: \$7.18

Mercedes Santos and Theresa Volpe 414 140th Ave., E. Madeira Beach, FL 33708

Reference Number: 50893

DSK Law Group 609 W. Horatio St. Tampa, FL 33606



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RETURN RECEIPT (ELECTRONIC)

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Total Postage: \$7.18

Mercedes Santos and Theresa Volpe 1745 Wesley Ave. Evanston, IL 60201

Reference Number: 50893

CODE ENFORCEMENT SPECIAL MAGISTRATE CITY OF MADEIRA BEACH

City of Madeira Beach,

Petitioner,

vs.

CASE NO. 2023.3600

Mercedes Santos and Theresa Volpe 1745 Wesley Ave Evanston, IL 60201-3518

Respondents.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned will bring on for Hearing before Bart R. Valdes, the Special Magistrate for the City of Madeira Beach, at City of Madeira Beach, Commission Chambers, 300 Municipal Drive, Madeira Beach, FL 33708, on Monday, September 25, 2023, at 2:00 p.m., or as soon thereafter as counsel may be heard, Respondents' Motion for Rehearing, Motion for Clarification and Motion for Extension of Time for Compliance.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Greec Mills, Code Compliance Officer

City of Madeira Beach

300 Municipal Drive

Madeira Beach, FL 33708

(727) 391-9951 x 298

E-Mail: gmills@madeirabeachfl.gov

Certificate of Service

A true and correct copy of this Notice of Hearing was delivered by certified mail and regular mail to Mercedes Santos and Theresa Volpe, 1745 Wesley Ave, Evanston, IL 60201-3518; posted to the property at 414 140th Avenue E., Madeira Beach, FL 33708; delivered by electronic mail to Leslie M. Conklin, Esq. (conklinles@yahoo.com), Clara VanBlargan, City Clerk of the City of Madeira Beach (cvanblargan@madeirabeachfl.gov), Thomas J. Trask, Esq., City Attorney for the City of Madeira Beach (tom@cityattorneys.legal) and Bart R. Valdes, Esq., Special Magistrate, (bvaldes@dsklawgroup.com), on this 12th day of September, 2023.

Grace Mills, Code Compliance Officer

City of Madeira Beach



300 Municipal Drive Madeira Beach, Florida 33708

Mercedes Santos and Theresa Volpe 1745 Wesley Ave Evanston, IL 60201-3518

Respondents.



| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY | |
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| Complete items 1, 2, and 3. | A. Signature | |
| Print your name and address on the reverse so that we can return the card to you. | | ☐ Agent |
| Attach this card to the back of the mailpiece, or on the front if space permits. | B. Received by (Printed Name) C. Dai | C. Date of Delivery |
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414 140th Ave E., Madeira Beach. Case # 2023.3600 - Notice of Hearing



Grace Mills To leslie conklin: VanBlargan, Clara: Tom Trask: Valdes, Bart R.



Hello all,

Please see attached for Notice of Hearing regarding the Respondents' Motion for Rehearing, Motion for Clarification and Motion for Extension of Time for Compliance regarding 414 140th Ave E., Madeira Beach, FL.

Thank you,

Grace Mills

Code Compliance Officer II

City of Madeira Beach 300 Municipal Dr. I (727) 391-9951 x298

www.Madeirabeachfl.gov





We are now using My Government Online (MGO). Click Here or scan QR Code to apply online for a permit, pay fees, and schedule inspections.

Disclaimer: Under Florida law (Florida Statute 668.6076), email addresses are public records. If you do not want your email address released in response to a public records request, please do not send electronic mail to the City of Madeira Beach. Instead, contact the appropriate department/division.

Reply

≪ Reply All

Item 6A.

3 AM

CITY OF MADEIRA BEACH, FLORIDA BUILDING DEPARTMENT

CITY OF MADEIRA BEACH, FL,

| Petitioner, | | |
|------------------------------------|---|---------------------|
| VS. | | Case No.: 2023.3600 |
| MERCEDES SANTOS and THERESA VOLPE, | | |
| Respondents. | , | |
| | / | |

RESPONDENTS' MOTION FOR REHEARING. MOTION FOR CLARIFICATION AND MOTION FOR EXTENSION OF TIME FOR COMPLIANCE

Respondents, Mercedes Santos and Theresa Volpe, by and through their undersigned counsel, move for rehearing, for clarification and for an extension of time to comply with the order imposing fines, and would show:

- 1. On August 28, 2023, the Special Magistrate entered Findings of Fact, Conclusions of Law and Order Imposing Fine.
- 2. At paragraph 21 of the order the Respondents were ordered to correct the "above stated violation" within 30 days by taking remedial action as set forth in the notice violation. However, the Order and Notice of Violation do not specify the actions to be taken but for applying for an after-the-fact permit. Respondents are in doubt about whether the scope of work to be covered by such after-the-fact permit is limited to the life safety issues delineated in paragraph 12 -- secondary egress for the two bedrooms on the first floor, an unpermitted water heater, improper electrical wiring and plumbing throughout the first floor, a washer and dryer within a closet without a proper dryer ventilating system and an unpermitted air handler.
- 3. While the Order specified that a reasonable time to correct the violation set forth in paragraph 12 was 30 days from the date of the Order, an unforeseen natural hazard intervened,

Hurricane Idelia. In addition to the request for rehearing and/or clarification of the scope of the corrections to bring the property into compliance, Respondents request a 90-day extension to come into compliance as they have been unable to engage a licensed contractor to even come on to the property for inspection, let alone outline scope of work including obtaining the necessary permit. Because of the damage to the area, including the City of Madeira Beach, the process of obtaining both a qualified contractor and the necessary permit is not possible within the 30 days specified in the Order.

WHEREFORE, Respondents pray that their Motion for Rehearing, Motion for Clarification and Motion for Extension of Time to Comply with Order Imposing Fines, be granted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 7, 2023, a copy of the foregoing has been furnished by U.S. Mail and/or eservice to:

City of Maderia Beach, FL Clara VanBlargan, City Clerk of Maderia Beach cvanblargan@madeirabeachfl.gov

Bart R. Valdes, Esquire Special Magistrate bvaldes@dsklawgroup.com Thomas J. Trask, Esquire City Attorney

kathy@cityattorneys.legal

Mercedes Santos Mercedes.santos.design@gmail.com

Theresa Volpe theresa.volpe.content@gmail.com

/s/ Leslie M. Conklin

LESLIE M. CONKLIN, ESQUIRE PRIMARY EMAIL: conklinles@yahoo.com Attorney for Plaintiff 1433 S. Fort Harrison Ave. Suite B Clearwater, FL 33756 FLA BAR NO. 228710

CODE ENFORCEMENT SPECIAL MAGISTRATE CITY OF MADEIRA BEACH

City of Madeira Beach 300 Municipal Drive Madeira Beach, Florida 33708,

Petitioner,

VS.

CASE NO. 2022.3467

Acquisition Group LLC 13311 2nd Street East Madeira Beach, Florida 33708

Respondents.

AFFIDAVIT OF COMPLIANCE

I, Grace Mills, Building Code Compliance Officer II, have personally examined the property described in

Madeira Beach Notice of Violation: 04-05-2022 Madeira Beach Special Magistrate Order: 03-27-2023

In the above-mentioned case and find that said property is in compliance with Sec. 86-52 of the Code of City of Madeira Beach, Florida, as of 08-02-2023.

Crace Mills, Code Compliance Officer

STATE OF FLORIDA

COUNTY OF PINELLAS

mant Drison

Before me on this 12th day of September, 2023, Grace Mills personally appeared who executed the foregoing instrument and who is personally known to me.

Notary



CODE ENFORCEMENT SPECIAL MAGISTRATE CITY OF MADEIRA BEACH

City of Madeira Beach 300 Municipal Drive Madeira Beach, Florida 33708

Petitioner,

VS.

CASE NO. 2022,3467

Acquisition Group LLC 13311 2nd Street East Madeira Beach, Florida 33708

Respondents.

RE Property: 13436 Boca Ciega Ave

Parcel #15-31-15-65304-003-0090

Legal Description: Page's Replat of Mitchells Beach Blk C, Lot 9

NOTICE OF HEARING

To whom it may concern:

YOU ARE HEREBY FORMALLY NOTIFIED that at **02:00 pm** on **MONDAY** the **25th** day of **SEPTEMBER**, **2023** at the Madeira Beach City Center in the Patricia Shontz Commission Chambers, located at 300 Municipal Drive, Madeira Beach, Florida 33708, a hearing will be held before the Special Magistrate concerning the following code violation(s):

Sec. 86-52. – When required.

A person, firm or corporation shall not construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or erect, or construct a sign, or install or alter fire extinguishing apparatus, elevators, engines, steam boiler, furnace, incinerator, or other heat producing apparatus, plumbing, mechanical or electrical equipment or any appurtenances, the installation of which is regulated by the land development regulations or other sections of the Code until a permit has been issued by the building official. When the cost of repair or modification does not exceed \$500.00, does not result in a structural change, and does not require an inspection, a permit need not be issued by the building official. No

permit is required for uncovering flat slabs of no greater than 50 square feet, for work of strictly cosmetic nature (painting, wallpapering, carpeting, kitchen cabinets, etc.) or roof work less than \$100.00 in value.

You are hereby ordered to appear before the Special Magistrate of the City of Madeira Beach on that date and time to answer these charges and to present your side of the case. Failure to appear may result in the Special Magistrate proceeding in your absence.

Should you be found in violation of the above code, the Special Magistrate has the power by law to levy fines of up to \$250.00 per day for an initial violation(s) and \$500.00 per day for repeat violations against you and your property for every day that any violation continues beyond the date set in an order of the Special Magistrate for compliance.

If the violation is corrected and then recurs, or if the violation is not corrected by the time specified by the Code Enforcement Officer for correction, the case may still be presented to the Special Magistrate of the City of Madeira Beach even if the violation has been corrected prior to the Special Magistrate hearing.

Should you desire, you have the right to obtain an attorney at your own expense to represent you before the Special Magistrate. You will also have the opportunity to present witnesses as well as question the witnesses against you prior to the Special Magistrate making a determination.

Please be prepared to present evidence at this meeting concerning the time frame necessary to correct the alleged violation(s), should you be found in violation of the City Code.

If you wish to have any witnesses subpoenaed or have any other questions, please contact the Code Enforcement department of the City of Maderia Beach within five (5) days at 300 Municipal Drive, Maderia Beach, Florida 33708, telephone number (727) 391-9951 ext 298.

Your failure to respond to the previously issued Notice of Violation has resulted in costs of prosecution of this case.

PLEASE NOTE: Should any interested party seek to appeal any decision made by the Special Magistrate with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based per Florida Statute 286.0105.

I DO HEREBY CERTIFY that a copy of the foregoing Notice of Hearing was mailed to Respondent(s) by certified mail, return receipt requested. Dated this 12th day of September, 2023.

Grace Mills, Code Compliance Officer City of Madeira Beach

Page 2 of 2



300 Municipal Drive Madeira Beach, Florida 33708

vs.

Acquisition Group LLC 13311 2nd Street East Madeira Beach, Florida 33708

Domestic Return Receipt

PS Form 3811, July 2020 PSN 7530-02-000-9053

□ Priority Mail Express®
□ Registered Mail™
□ Registered Mail Restricted
Delivery
□ Signature Confirmation™
□ Signature Confirmation
Restricted Delivery ☐ Agent ☐ Addressee C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No COMPLETE THIS SECTION ON DELIVERY 3. Service Type

1. Adult Signature

1. Adult Signature

1. Adult Signature Restricted Delivery

2. Certified Mail Restricted Delivery

1. Collect on Delivery Restricted Delivery

1. Collect on Delivery Restricted Delivery

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1. Insured Mail Instricted Delivery

2. Over \$500) B. Received by (Printed Name) A. Signature PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS FOLD AT COTTED LIME OF THE RETURN ADDRESS. × Madeira Beach, fl 83708 Haquishion Group U.C. 13311 2nd Street E. Attach this card to the back of the mailpiece, Print your name and address on the reverse 9590 9402 7951 2305 9246 25 2. Article Number (Transfer from service label) so that we can return the card to you. SENDER: COMPLETE THIS SECTION or on the front if space permits. Complete items 1, 2, and 3.

