

ISLAMORADA, VILLAGE OF ISLANDS
CODE COMPLIANCE HEARING OFFICER

Case No.: 11-MCLT-GM

ISLAMORADA, VILLAGE OF ISLANDS,

Petitioner,

vs.

MONROE COUNTY LAND TRUST, INC.

Respondent.

MOTION TO ABATE AND PROVISIONAL MOTION TO CONTINUE

COMES NOW, Respondent, Monroe County Land Trust, Inc., by and through undersigned counsel, and moves this Honorable Court for the entry of an Order abating the instant code compliance action and as grounds therefore would show and state:

1. The instant action should be abated because resolution of this matter is dependent upon the outcome of a declaratory judgment and inverse condemnation action pending in the Circuit Court in and for Monroe County, Florida styled, James Bellizzi, Donna Bellizzi and Monroe County Land Trust, Inc. v. Islamorada, Village of Islands, case number 10-CA-334 P (hereafter referred to as the "Court Case").

2. Respondent has been cited for violating Sections 6-61(a)(1) and (a)(2), Section 30-212(a), and Section 50-24(a) of the Village Code.

2. In sum and substance, the Village maintains or asserts Respondent constructed a fence within their right-of-way without benefit of a permit and engaged in unpermitted clearing of the right-of-way and/or adjoining property.

3. Respondent maintains or asserts that he is the lawful owner of the subject real property and is and always has been entitled to engage in the activities giving rise to

the charges filed against him in this case.

4. The Village maintains and asserts he is not the lawful owner of such property and no permits can be issued without the consent of certain other property owners located in the subdivision known as Venetian Shores.

5. As the result of the position of the Village, Respondent will not be able to obtain an "after the fact" permit to correct any alleged violations if he is found guilty of the charged violations.

6. Long before initiation of the instant code enforcement action, Respondent filed the Court Case against Petitioner which seeks, *inter alia*, an adjudication as to who is the lawful owner of certain roads in the Venetian Shores sub-division: the individual lot owners or the Village of Islamorada.

7. If Respondent is successful in its litigation, the Village will be required to grant him after the fact permits for the alleged violations. Thus, resolution of the instant case is directly dependent upon the outcome of the Court Case.

8. The activities undertaken by the Respondent do not create any safety of life issues. To the contrary, construction of the fence on the property has resulted in the enhancement of safety since said property previously served as a haven for drug users and was also the site of unlawful dumping. Simply stated, the alleged activities of the Respondent have actually increased the safety of the neighborhood and prevented environmental damage.

9. It would be inequitable to allow the Village to proceed in the instant action until such time as the underlying ownership issues are resolved in the Court Case.

10. Should the Hearing Officer refuse to abate the action, Respondent prays he grant Respondent a continuance of not less than 30 days in order to allow his counsel sufficient time to prepare for the hearing of the alleged violations.

WHEREFORE, Respondent prays the Code Compliance Hearing Officer enter an order abating the instant code compliance matter until such time that a final judgment is issued in the Circuit Court Case. Alternatively, if abatement is denied, Respondent requests the code compliance hearing officer grant Respondent an extension of not less than 30 days in order to allow his counsel to prepare for the hearing on the alleged violations.

CERTIFICATE OF SERVICE

I hereby certify that an original of the foregoing was sent via FAX & U.S. Mail to Islamorada, Village of Islands, George Martell, Code Compliance Officer, 81990 Overseas Highway, 2nd Fl, Islamorada, Florida 33036 and attorneys Alexander L. Palenzuela-Mauri, Esq. and Nina Boniske, Esq. of Weiss Serota Helfman Pastoriza Cole & Boniske, PL, 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, FL 33134 on April 15, 2011.

Hershoff, Lupino & Yagel, LLP
Attorneys for Respondent
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By: 

RUSSELL A. YAGEL, ESQ.
Florida Bar. No.: 727090

ISLAMORADA VILLAGE OF ISLANDS, FLORIDA
CODE COMPLIANCE HEARING OFFICER

ISLAMORADA, VILLAGE OF ISLANDS,

Case No. 11-MCLT-GM

Petitioner,

v.

MONROE COUNTY LAND TRUST, INC.,

Respondent.

_____/

**ORDER GRANTING RESPONDENT'S MOTION FOR CONTINUANCE AND
RESERVING JURISDICTION ON RESPONDENT'S MOTION TO ABATE**

THIS CAUSE, having come to be heard upon Respondent's Motion to Abate and Provisional Motion to Continue, dated April 15, 2011 ("Respondent's Motion"), it is hereby ordered that this Hearing Officer RESERVES JURISDICTION TO RULE on Respondent's Motion to Abate and that Respondent's Motion for Continuance is GRANTED, as follows:

1. Respondent is presently scheduled to appear before the Code Compliance Hearing Officer at its scheduled hearing on April 26, 2011 ("Scheduled Hearing Date").
2. Respondent has requested that this Code Compliance case be abated or, in the alternative, that a continuance be granted in order to adequately prepare for the hearing.

3. Prior to hearing evidence with respect to this Code Compliance case, the Respondent's Motion to Abate will need to be ruled on by the Code Compliance Hearing Officer.

4. Section 2-118(d) of the Code of Ordinances of Islamorada, Village of Islands, states that a hearing date may be continued only once and requires that before a continuance is granted by the Code Compliance Hearing Officer, there must be a determination that good cause exists and that the continuance furthers the interest of justice.

5. In light of the assertions presented in Respondent's Motion and pursuant to Section 2-118(d) of the Village Code, Respondent's request for continuance is GRANTED.

6. With respect to the Respondent's Motion to Abate, the Respondent shall, no later than May 6, 2011, file with the code compliance clerk and the Petitioner, a brief memorandum of law with copies of cited case law in support of and limited to Respondent's Motion to Abate.

7. Petitioner may, no later than May 6, 2011, file with the code compliance clerk and the Respondent, a brief memorandum of law with copies of cited case law in opposition to Respondent's Motion to Abate.

8. The code compliance clerk is hereby directed to continue this case to the next available Code Compliance Hearing date, which is May 17, 2011, at 1:30 p.m. ("Rescheduled Hearing Date"), and is further directed to notify the code compliance officer and the Respondent of re-scheduled hearing, date, time, and location.

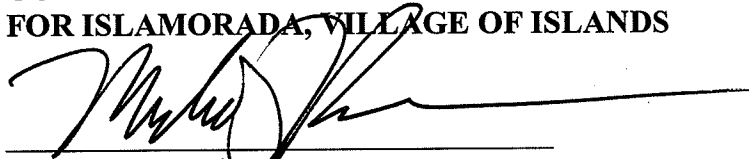
9. On the Rescheduled Hearing Date, the Code Compliance Hearing Officer will hear arguments on Respondent's Motion to Abate prior to hearing the case.

10. Nothing herein shall prohibit the Petitioner, ISLAMORADA, VILLAGE OF ISLANDS, from requesting a continuance beyond the Rescheduled Hearing Date or from moving the Rescheduled Hearing Date to a later date.

11. Pursuant to Section 2-118(d) of the Village Code, no further continuances requested by the Respondent will be granted in this case.

DONE AND ORDERED at Islamorada, Village of Islands, Monroe County, Florida, on this 20th day of April, 2011.

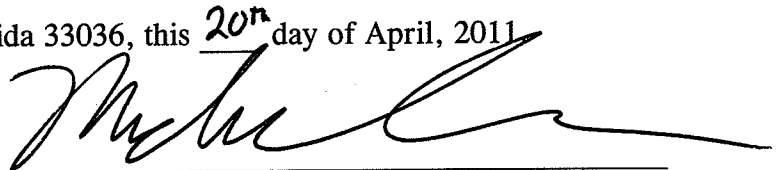
**CODE COMPLIANCE HEARING OFFICER
FOR ISLAMORADA, VILLAGE OF ISLANDS**



Michael J. Pawelczyk
Code Compliance Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent (1) via U.S. Mail and facsimile transmission (305-852-8848) to Russell A. Yagel, Esq., Hershoff, Lupino & Yagel, LLP, 90130 Old Highway, Tavernier, Florida 33070; (2) via U.S. Mail and facsimile transmission (305-854-2323) to Alexander L. Palenzuela-Mauri, Esq., Weiss, Serota Helfman Pastoriza Cole & Boniske, PL, 2525 Ponce de Leon Boulevard, Coral Gables, Florida 33134; and (3) via U.S. Mail and e-mail (barbara.johnson@islamorada.fl.us) to Barbara Johnson, Code Compliance Clerk, Village Administrative Center & Public Safety Headquarters, 2nd Floor, 86800 Overseas Highway, Islamorada, Florida 33036, this 20th day of April, 2011.



Michael J. Pawelczyk
Code Compliance Hearing Officer

ISLAMORADA VILLAGE OF ISLANDS, FLORIDA
CODE COMPLIANCE HEARING OFFICER

ISLAMORADA, VILLAGE OF ISLANDS,

Case No. 11-MCLT-GM

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MONROE COUNTY LAND TRUST, INC.,

Respondent.

ORDER VACATING
PRIOR ORDER GRANTING RESPONDENT'S MOTION
FOR CONTINUANCE AND RESERVING JURISDICTION
ON RESPONDENT'S MOTION TO ABATE

THIS CAUSE, having been brought to the attention of the Code Compliance Hearing Officer by the parties in this case, pursuant to the joint request to vacate the prior Order Granting Respondent's Motion for Continuance and Reserving Jurisdiction on Respondent's Motion to Abate ("Prior Order"), it is hereby ordered that the Prior Order is hereby VACATED, as follows:

1. Respondent was scheduled to appear before the Code Compliance Hearing Officer at its scheduled hearing on April 26, 2011.
2. Respondent filed a Motion to Abate and Provisional Motion to Continue, said Motion dated April 15, 2011 ("Motion to Abate").

3. The Code Compliance Hearing Officer entered an Order on Respondent's Motion to Abate, said Prior Order dated April 20, 2011.

4. Unbeknownst to the Code Compliance Hearing Officer, legal counsel for and on behalf of the Respondent agreed, without prejudice to either party, to withdraw the Motion to Abate in exchange for the Petitioner removing the case from the Code Compliance Hearing Agenda of April 26, 2011, which agreement is set forth in the email correspondence attached hereto and made a part hereof as Exhibit "A".

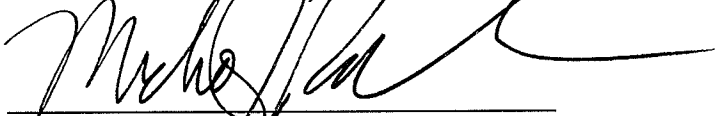
5. Respondent and Petitioner have requested that the Prior Order be vacated..

6. Nothing herein shall prohibit or restrict the Respondent from renewing Respondent's motion should Petitioner re-set this matter for hearing prior to the conclusion of the state court proceeding specifically referenced in respondent's Motion to Abate.

7. Accordingly, the Prior Order is hereby VACATED.

DONE AND ORDERED at Islamorada, Village of Islands, Monroe County, Florida, on this 25th day of April, 2011.

**CODE COMPLIANCE HEARING OFFICER
FOR ISLAMORADA, VILLAGE OF ISLANDS**

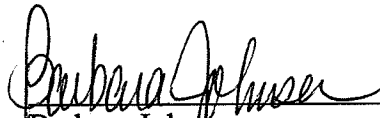


Michael J. Pawelczyk
Code Compliance Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent via U.S. Mail to: Russell A. Yagel, Esq., Hershoff, Lupino & Yagel, LLP, 90130 Old Highway, Tavernier, Florida 33070; and to ~~Alexander L. Palenzuela-Mauri, Esq.,~~

~~Weiss, Serota Helfman Pastoriza Cole & Boniske, PL, 2525 Ponce de Leon Boulevard,
Coral Gables, Florida 33134; this 27 day of April, 2011.~~



Barbara Johnson

Clerk of the Code Compliance Hearing Officer