

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.



Bart R. 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.



Bart R. 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)



Total Postage: \$7.18

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

Reference Number: 50893

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Tampa, FL 33606



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