


MEMORANDUM  
CITY OF ST. PETERSBURG

**TO:** The Honorable Chair and City Council Members  
**FROM:** Jeanne Hoffmann, Assistant City Attorney   
**DATE:** July 8, 2009  
**RE:** Dave McDonnell et al. v. City of St Petersburg

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In March 2007, the McDonnells filed suit against the City in order to obtain permits for a house located at 248 Catalan Blvd. NE. The complaint consisted of a request for injunctive relief and for declaratory relief. The basis for the request for declaratory relief was that the McDonnells did not violate the City Code related to substantial improvements on their property and should be able to obtain permits.

In 2004, the Federal Emergency Management Agency worked with the City on its Flood Damage Prevention ordinance to ensure compliance, in part, with FEMA's requirements for properties located in Flood Zone A, which included the property at issue. The property was later re-categorized to a Flood Zone AE designation and the ordinance revised in 2007. In order to obtain permits to conduct construction on a residence located in Flood Zone A or Flood Zone AE, the cost of improvements cannot exceed 50% of the market value of a structure determined by an appraisal. In the event the cost of improvements did exceed 50 %, to perform the improvements would require the structure to be elevated to or above base flood elevation or the demolition of the existing structure with a new structure rebuilt at or above the base flood elevation, or abandonment of the first floor with it being used for parking, limited storage and building access with livable floor/s built above the first floor.

In 2000, the prior owner, Kirby Watson obtained a permit for the property to make improvements which were less than the 50 % of the market value of the structure. In the course of making those permitted improvements, Mr. Watson also made non-permitted improvements which brought the total value of the improvements 50 % above the market value of the residence. The City ordered Mr. Watson to cease and desist and Mr. Watson abandoned the property. The permit was never closed and no final inspections conducted because the permitted work was not completed and the non-permitted work was never resolved. When the McDonnells purchased the property, the issues remained. Because of FEMA's requirements for properties located in a flood zone, the City informed the McDonnells that they were not entitled to a new permit or a reevaluation of the permitted and non-permitted work. The McDonnells did not agree and filed suit. The McDonnells have proposed a conditional settlement agreement which would require FEMA to agree to allow the initial permit for all permitted work to be closed after completion of the work and a second after-the-fact permit to be obtained for all the non-permitted and additional work. If FEMA agrees to the McDonnells' proposal in writing or by court order, the City would be able to issue permits to then resolve the issue.

This settlement agreement will be for consideration at the July 9, 2009 City Council meeting and the City Attorney's Office recommends approval. Please contact me if you wish to obtain a copy of the settlement agreement.

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