



TOWN OF JUPITER INLET COLONY
A MUNICIPAL CORPORATION

**NOTICE OF PUBLIC MEETING
BUILDING AND ZONING COMMITTEE
LOCATION: TOWN HALL, 50 COLONY ROAD
DATE AND TIME: THURSDAY, SEPTEMBER 21, 2023 AT 5:00 PM**

**Join by Zoom: <https://zoom.us/join>
OR dial-in by location:**

+1-301-715-8592
+1-312-626-6799
+1-929-205-6099

+1-253-215-8782
+1-346-248-7799
+1-669-900-6833

**Meeting ID: 585 628 8134
Password: 3787**

WORKSHOP AGENDA

1. Call to Order.
2. Roll Call: Earl Fischer (Chair), Russell Bourne (Vice Chair), Butch Harper, William Gilbane, Brad Eavenson, Roger Siboni, Bill Muir. Planning and Zoning Administrator: Bill Whiteford
3. Public Comments - items not on the agenda (3 minutes).
4. Discussion Item:
 - A. Permit Fees and Extensions, Ordinance 2019-07 (continued from 08-17-2023)
5. Any Other Matters.
6. Motion to Adjourn.

STATE MANDATED STATEMENT

If a person decides to appeal any decision made by the board, agency, or Commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, 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. Any person requiring a special accommodation at this meeting because of a disability or physical impairment should contact the Town Administrative Office at 50 Colony Road, Jupiter Inlet Colony, FL 33469, or by telephone at 561-746-3787, prior to the meeting.

BUILDING PERMIT FEES AND EXTENSIONS MUNICIPAL COMPARISON

MUNICIPALITY	ORIGINAL FEE*	CONSTRUCTION VALUE	INITIAL TERM	EXTENSION FEE	EXTENSION TERM
Juno Beach ¹	3.0%	Value of work being performed. Minimum valuation determined by Marshall & Swift® cost analysis. Final building permit valuation set by Building Official. Final cost affidavit required before CO issued. ²	≤ 5,000 sf = 12 months	Master: \$75.00 Sub-Permit: \$50.00	90 days – by Town Manager, demonstrate justifiable cause +90 days - by Town Council, not to exceed 12 months
			> 5,000 sf - < 10,000 sf = 24 months		
			≥ 10,000 sf = 36 months		
Jupiter ³	2.0%	Submit contract or use current <u>ICC valuation chart</u>	Work considered to be in active progress when permit has received an approved inspection within 6 months. ⁴	30% of original 2% fee	1 or more, 3 months each
Jupiter Island ⁵	2.25%	Total job/construction value	18 months	1% cost of unfinished work	1 st 6 months – by admin official for good cause shown
					2 nd 6 months – by board of adjustment for good cause shown

¹ Fee Schedule available at: [https://www.juno-beach.fl.us/sites/default/files/fileattachments/building/page/2821/new - building division fee schedule.pdf](https://www.juno-beach.fl.us/sites/default/files/fileattachments/building/page/2821/new_-_building_division_fee_schedule.pdf)

² Permit conditions found at: https://library.municode.com/fl/juno_beach/codes/code_of_ordinances?nodeId=PTIICOR_CH6BUBURE_ARTIIFLBUCO_S6-24ADAM

³ Fee Schedule available at: <https://www.jupiter.fl.us/DocumentCenter/View/23737/Feeschd-2007---073119>

⁴ Building Dept. SOP re: Expired Applications, Expired Permits available at: <https://www.jupiter.fl.us/DocumentCenter/View/19616/Expired-Applications-Expired-Permits-SOP?bidId=>

⁵ Permit fee calculation available at (top pg. 2): [https://townofjupiterisland.com/images/stories/documents/Building Permits Application Form.pdf](https://townofjupiterisland.com/images/stories/documents/Building_Permits_Application_Form.pdf)

Jupiter Inlet Colony	3.0%	\$350/sf new floor area	≤ 4,000 sf = 12 months	3.0% of original fee	1 st 6 months
			> 4,000 sf = 18 months		2 nd 6 months
		\$150/sf existing floor area under renovation			3 rd extension based on square footage; full resubmittal required
					4 th 6 months
Palm Beach ⁶	2.8%	Construction value	See: Table 1. Construction Schedule ⁷	\$500	Negotiated - by Town Council for good cause shown
Palm Beach Gardens ⁸	10%	Based on current fair market value of proposed improvement. Executed contract or cost of construction using nationally recognized sources such as ICC Building Valuation Data, RS Means Cost Data, Marshall Swift, or similar publication. Copy of contract may be required.	Work considered to be in active progress when permit has received an approved inspection within 6 months (Sec. 105.4.1.3. Admin. Code)	\$50	1 st 90 days
				\$75	2 nd 90 days
				\$100	3 rd 90 days
				Permit Reissuance Fee: 30% of original Building Permit Fee plus additional Plan Review Fee as determined by Building Official	After 180 days of original expiration date, must meet current code and may require new submittal

* Based on construction value. Date of table: 09-15-2023.

⁶ Fee Schedule available at (pg. 10): <https://www.townofpalmbeach.com/DocumentCenter/View/4781/Composite-Fee-Schedule-Master-List?bidId=>

⁷ Table 1 available here: https://library.municode.com/fl/palm_beach/codes/code_of_ordinances?nodeId=PTIICOOR_CH18BUBURE_ARTIVFLBUO_DIV1GE_S18-237AGMATISCCOMACO

⁸ Fee Schedule available at (pg. 3-5): <https://www.pbgfl.com/DocumentCenter/View/27/Fee-Schedule?bidId=>

PERMIT FEES / PERMIT EXTENSIONS PROPOSED REVISIONS TO RESOLUTION 2019-07

1. PERMIT FEES

- New Construction: \$650.00 per sf
- Existing Structure or Building, Exterior Remodel or Addition: \$450.00 per sf
- Existing Structure or Building, Interior Remodel: \$250.00 per sf

2. TIME TO COMPLETE CONSTRUCTION

- 4,000 sf and under – 12 months (no change)
- 4,001 sf and over – 18 months (no change)

3. PERMIT EXTENSIONS

- 1st Extension: 6 months; 3% of cost to complete work
- 2nd Extension: 6 months; 3% of original permit

4. COURTESY NOTICE

- Town to notify builder/contractor of record *and* property owner 45 days prior to the expiration date of an active permit.

5. STOP WORK ORDER

- Any fees not paid prior to the expiration date of a permit will result in a Stop Work Order issued by the Town Building Official. – check with Buck

6. CONSTRUCTION SCHEDULE

- At time of permit application to the Town, the builder/contractor of record shall submit a detailed Schedule of Construction, from start to finish.

7. RESPONSIBILITY FOR PAYMENT OF FEES

- Builder and property owner should determine in advance who is responsible for payment of all fees, including extension fees and potential fines, to the Town.

8. CERTIFICATE OF OCCUPANCY OR COMPLETION

- No CO, temporary CO, CC, or right to occupy a building or utilize a structure shall be issued by the Town Building Official until all outstanding fees are paid to the Town.

Notes:

1. All sf figures based on gross building or affected area, as determined by the Building Official.
2. All fees are paid at Town Hall to the Town Clerk.

PERMIT FEES / PERMIT EXTENSIONS PROPOSED REVISIONS TO RESOLUTION 2019-07

1. PERMIT FEES

- New Construction: \$650.00 per sf (Defined as total floor space or under air?)
- Existing Structure or Building, Exterior Remodel or Addition: \$450.00 per sf
- Existing Structure or Building, Interior Remodel: \$250.00 per sf

2. TIME TO COMPLETE CONSTRUCTION

- 4,000 sf and under – 18 months
- 4,001 sf and over – 24 months
- Additional 2 months for building requiring pilings (water front)

3. PERMIT EXTENSIONS

- 1st Extension: 6 months; 3% of cost to complete work remaining
- 2nd Extension: 6 months; 3% of original permit Delete this option

4. COURTESY NOTICE

- Town to notify builder/contractor of record *and* property owner 45 days prior to the expiration date of an active permit.

5. STOP WORK ORDER

- Any fees not paid prior to the expiration date of a permit will result in a Stop-work Order issued by the Town Building Official. – check with Buck

6. CONSTRUCTION SCHEDULE

- At time of permit application to the Town, the builder/contractor of record shall submit a detailed Schedule of Construction, from start to finish which will be evaluated by the Town Building Official for completeness and accuracy.

7. RESPONSIBIITY FOR PAYMENT OF FEES

- Builder and property owner should determine in advance who is responsible for payment of all fees, including extension fees and potential fines, to the Town **in writing.**

-

8. CERTIFICATE OF OCCUPANCY OR COMPLETION

- No CO, temporary CO, CC, or right to occupy a building or utilize a structure shall be issued by the Town Building Official until all outstanding fees are paid to the Town **as finalized by the review of the submitted final “as built” plans and costs.**

Notes:

1. All sf figures based on gross building or affected area, as determined by the Building Official.
2. All fees are paid at Town Hall to the Town Clerk.

Note for me: what does gross building or affected area actually mean?

RESPONSE: GROSS BUILDING AREA means all area under roof. AFFECTED AREA is determined by the Building Official.

RESOLUTION NO. 2019-07

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF JUPITER INLET COLONY, FLORIDA, AMENDING ITS SCHEDULE OF PERMIT FEES IN ACCORDANCE WITH SECTION 4-1.1 OF THE CODE OF ORDINANCES TO ADOPT AND ESTABLISH A NEW SCHEDULE OF PERMIT FEES; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Section 4-1.1 of the Code of Ordinances, Town of Jupiter Inlet Colony, Florida, provides that permit fees shall be established by Resolution duly adopted by the Town Commission; and

WHEREAS, the Town Commission hereby desires to adopt and establish a schedule of permit fees as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF JUPITER INLET COLONY, FLORIDA, that:

SECTION 1: Permit fees are hereby adopted and established pursuant to the following schedule:

(a) Building Permit Fees:

Amount is based on contract or the fair and reasonable construction value of the proposed work to be accomplished in the Town subject to adjustment as set forth in Section 4-10(d) of the Town's Code of Ordinances. For purposes of the issuance of a building permit for new construction, the construction value shall initially be estimated at \$350.00/ square foot of total floor area as defined in Appendix A-Zoning Code. For purposes of the issuance of a building permit for a major remodel or re-build (requiring a 12 month building permit), the construction value shall initially be estimated at \$350.00/square foot of proposed new floor area and \$150.00/square foot of existing floor area for proposed renovation.

<u>AMOUNT</u>	<u>FEE</u>
Up to \$2,000.00	\$60.00
Above \$2,000.00	3.0%

- (b) Moving building: \$1,000.00
- (c) Demolition: \$350.00 minimum, or 3% of cost of demolition, whichever is greater
- (d) Structural Pest Control: \$50.00
- (e) A new construction plan review fee of \$400.00 is required for all new construction projects. The fee is non-refundable and is not credited to the permit fee at the time of permit issuance.
- (f) Plan Revision Fee: \$75.00 per revision
- (g) Re-inspection Fee(s):
 First Re-inspection: \$ 50.00
 Second Re-inspection: \$100.00
 Third & Subsequent Re-inspection(s): \$150.00
- (h) Additional Plan Review Fee(s):
 A fee of \$75.00 per hour shall be charged for all plan review(s) subsequent to the initial new construction plan review.
- (i) Inspection Fee(s) for inspections on non-scheduled days:
 Regular inspections will be performed only on Tuesday and Thursday between the hours of 8:00 A.M. and 4:00 P.M. In the event an inspection is requested to be performed at other times, a surcharge of \$300.00 shall be due for each such inspection performed.
- (j) Renewal Permit Fee(s): (To be charged in the event of the expiration of an initial or renewal permit due to non-completion of work) ~~A fee of 1/3 of the fee for all permits issued for the subject construction shall be charged and paid at the time of the issuance of a renewal permit.~~
- | | |
|---|-------------|
| 1) <u>1st Renewal (6 month term)</u> | <u>3.0%</u> |
| 2) <u>2nd Renewal (6 month term)</u> | <u>3.0%</u> |
| 3) <u>3rd Renewal (term based on square footage)</u> | <u>3.0%</u> |
| <u>Full Re-submittal required</u> | |
| 4) <u>Additional Renewals (6 month term)</u> | <u>3.0%</u> |
- (k) Zoning Review Fee: A zoning review fee in the amount of \$500.00 shall be required on all submittals of plans for a building permit that require review by the Building and Zoning Committee.
- (l) Zoning Variance Fee: A zoning variance fee in the amount of ~~\$1000.00~~ \$2500.00 plus administrative (mailing and publication) costs shall be required on all applications for a variance from the provisions of the Zoning Code. A deposit of \$2500.00 shall be paid at time of application and all administrative costs must be paid prior to the public hearing before the Town Commission.

- (m) Zoning Waiver Fee: A zoning waiver fee in the amount of \$125.00 shall be required on all applications for a waiver from the provisions of the Zoning Code.


SECTION 2: All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 3: Should any section or provision of this Resolution or any portion thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remainder of this Resolution.

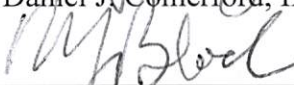
SECTION 4: This Resolution shall become effective on adoption.

PASSED AND ADOPTED this 9th day of September, 2019.

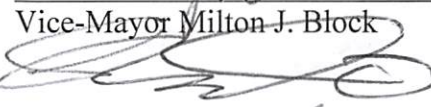
TOWN OF JUPITER INLET COLONY,
FLORIDA



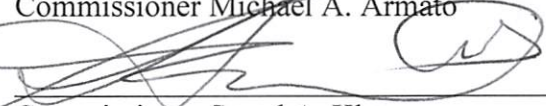
Mayor Daniel J. Comerford, III



Vice-Mayor Milton J. Block



Commissioner Michael A. Armato

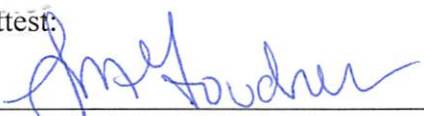


Commissioner Saeed A. Khan



Commissioner Richard D. Busto

Attest:



Town Clerk Jude M. Goudreau

Bill Whiteford

Subject: FW: JIC_permit fees and extensions
Attachments: Barfield v. Town of Jupiter Inlet Colony_ 2012 Fla. Cir (1).DOCX; 2023 FL Statutes Ch 553-553.80 Enforcement.pdf

Bill,

To follow up on our conversation, attached is a copy of Section 553.80, Fla. Stat. Subsection (7)(a) that pertains to the levy of building permit fees. In general, this statute provides that building permit fees may be utilized solely for carrying out the government's responsibilities in enforcing the Florida Building Code. The statute goes on to define what expenses may be included in the analysis. It also provides that if excess fees are collected, the excess must either be refunded or carried forward for allowable activities. Subsection (7)(b) creates a fairly extensive reporting requirement effective December 31, 2020 and goes on to provide that a report must be updated prior to a Town adjusting its building permit fee schedule. I have highlighted pertinent sections of the statute.

Also attached for your reference is a copy of the *Barfield v Town of JIC* trial court decision that touched on some of these building permit type issues. The trial court opinion was affirmed on appeal without written opinion.

For any of the recipients of this email, please give me a call if you would like to discuss.

William P. Doney, Esq.
Caldwell Pacetti Edwards Schoech & Viator LLP
1555 Palm Beach Lakes Blvd., Suite 1200
West Palm Beach, Florida 33401
Tel.: (561) 655-0620
Fax: (561) 655-3775

From: Bill Whiteford <w cw@teamplaninc.com>
Sent: Wednesday, August 16, 2023 2:16 PM
To: Buck Evans (buckevansco@gmail.com) <buckevansco@gmail.com>
Cc: 'Ivelisse Chico-Randazzo' (Randazzol@jupiterinletcolony.org) <Randazzol@jupiterinletcolony.org>; William P. Doney <doney@caldwellpacetti.com>
Subject: JIC_permit fees and extensions

Hi Buck – the JIC Building and Zoning Committee forwarded me notes they want to discuss at their meeting tomorrow, which will be conducted as a workshop. Their handwritten notes are attached, along with a clean version that outlines changes to Resolution-2019-07, which is also attached. One of the items references a Stop Work Order (#5) that you should be aware of. Let me know if you have any comments or concerns that I should share with the Committee or if you would like to participate in the meeting. Thanks, Bill

Bill Whiteford, PhD, AICP, LEED® BD+C & ND 
Principal, TEAM PLAN INC.
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The 2023 Florida Statutes

Title XXXIII	Chapter 553	View Entire Chapter
REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS	BUILDING CONSTRUCTION STANDARDS	

553.80 Enforcement.—

(1) Except as provided in paragraphs (a)-(g), each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida Building Code required by this part on all public or private buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government under s. [553.79\(11\)](#).

(a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.

(b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.

(c) In addition to the requirements of s. [553.79](#) and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

(d) Building plans approved under s. [553.77\(3\)](#) and state-approved manufactured buildings, including buildings manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. [553.842](#). Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

(e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).

(f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.

(g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph (c).

The governing bodies of local governments may provide a schedule of fees, as authorized by s. [125.56\(2\)](#) or s. [166.222](#) and this section, for the enforcement of the provisions of this part. Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on July 1, 1998. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

- (2)(a) Any two or more counties or municipalities, or any combination thereof, may, in accordance with the provisions of chapter 163, governing interlocal agreements, form an enforcement district for the purpose of enforcing and administering the provisions of the Florida Building Code. Each district so formed shall be registered with the department on forms to be provided for that purpose. Nothing in this subsection shall be construed to supersede provisions of county charters which preempt municipal authorities respective to building codes.

(b) With respect to evaluation of design professionals' documents, if a local government finds it necessary, in order to enforce compliance with the Florida Building Code and issue a permit, to reject design documents required by the code three or more times for failure to correct a code violation specifically and continuously noted in each rejection, including, but not limited to, egress, fire protection, structural stability, energy, accessibility, lighting, ventilation, electrical, mechanical, plumbing, and gas systems, or other requirements identified by rule of the Florida Building Commission adopted pursuant to chapter 120, the local government shall impose, each time after the third such review the plans are rejected for that code violation, a fee of four times the amount of the proportion of the permit fee attributed to plans review.

(c) With respect to inspections, if a local government finds it necessary, in order to enforce compliance with the Florida Building Code, to conduct any inspection after an initial inspection and one subsequent reinspection of any project or activity for the same code violation specifically and continuously noted in each rejection, including, but not limited to, egress, fire protection, structural stability, energy, accessibility, lighting, ventilation, electrical, mechanical, plumbing, and gas systems, or other requirements identified by rule of the Florida Building Commission adopted pursuant to chapter 120, the local government shall impose a fee of four times the amount of the fee imposed for the initial inspection or first reinspection, whichever is greater, for each such subsequent reinspection.

(3)(a) Each enforcement district shall be governed by a board, the composition of which shall be determined by the affected localities.

(b)1. At its own option, each enforcement district or local enforcement agency may adopt rules granting to the owner of a single-family residence one or more exemptions from the Florida Building Code relating to:

a. Addition, alteration, or repairs performed by the property owner upon his or her own property, provided any addition or alteration shall not exceed 1,000 square feet or the square footage of the primary structure, whichever is less.

b. Addition, alteration, or repairs by a nonowner within a specific cost limitation set by rule, provided the total cost shall not exceed \$5,000 within any 12-month period.

c. Building and inspection fees.

2. However, the exemptions under subparagraph 1. do not apply to single-family residences that are located in mapped flood hazard areas, as defined in the code, unless the enforcement district or local enforcement agency has determined that the work, which is otherwise exempt, does not constitute a substantial improvement, including the repair of substantial damage, of such single-family residences.

3. Each code exemption, as defined in sub-subparagraphs 1.a., b., and c., shall be certified to the local board 10 days prior to implementation and shall only be effective in the territorial jurisdiction of the enforcement district or local enforcement agency implementing it.

(4) When an enforcement district has been formed as provided herein, upon its registration with the department, it shall have the same authority and responsibility with respect to building codes as provided by this part for local governing bodies.

(5) State and regional agencies with special expertise in building code standards and licensing of contractors and design professionals shall provide support to local governments upon request.

(6) Notwithstanding any other law, state universities, Florida College System institutions, and public school districts shall be subject to enforcement of the Florida Building Code under this part.

(a)1. State universities, Florida College System institutions, or public school districts shall conduct plan review and construction inspections to enforce building code compliance for their building projects that are subject to the Florida Building Code. These entities must use personnel or contract providers appropriately certified under part XII of chapter 468 to perform the plan reviews and inspections required by the code. Under these arrangements, the entities are not subject to local government permitting requirements, plans review, and inspection fees. State

universities, Florida College System institutions, and public school districts are liable and responsible for all of their buildings, structures, and facilities. This paragraph does not limit the authority of the county, municipality, or code enforcement district to ensure that buildings, structures, and facilities owned by these entities comply with the Florida Building Code or to limit the authority and responsibility of the fire official to conduct firesafety inspections under chapter 633.

2. In order to enforce building code compliance independent of a county or municipality, a state university, Florida College System institution, or public school district may create a board of adjustment and appeal to which a substantially affected party may appeal an interpretation of the Florida Building Code which relates to a specific project. The decisions of this board, or, in its absence, the decision of the building code administrator, may be reviewed under s. 553.775.

(b) If a state university, Florida College System institution, or public school district elects to use a local government's code enforcement offices:

1. Fees charged by counties and municipalities for enforcement of the Florida Building Code on buildings, structures, and facilities of state universities, state colleges, and public school districts may not be more than the actual labor and administrative costs incurred for plans review and inspections to ensure compliance with the code.

2. Counties and municipalities shall expedite building construction permitting, building plans review, and inspections of projects of state universities, Florida College System institutions, and public schools that are subject to the Florida Building Code according to guidelines established by the Florida Building Commission.

3. A party substantially affected by an interpretation of the Florida Building Code by the local government's code enforcement offices may appeal the interpretation to the local government's board of adjustment and appeal or to the commission under s. 553.775 if no local board exists. The decision of a local board is reviewable in accordance with s. 553.775.

(c) The Florida Building Commission and code enforcement jurisdictions shall consider balancing code criteria and enforcement to unique functions, where they occur, of research institutions by application of performance criteria in lieu of prescriptive criteria.

(d) School boards, Florida College System institution boards, and state universities may use annual facility maintenance permits to facilitate routine maintenance, emergency repairs, building refurbishment, and minor renovations of systems or equipment. The amount expended for maintenance projects may not exceed \$200,000 per project. A facility maintenance permit is valid for 1 year. A detailed log of alterations and inspections must be maintained and annually submitted to the building official. The building official retains the right to make inspections at the facility site as he or she considers necessary. Code compliance must be provided upon notification by the building official. If a pattern of code violations is found, the building official may withhold the issuance of future annual facility maintenance permits.

This part may not be construed to authorize counties, municipalities, or code enforcement districts to conduct any permitting, plans review, or inspections not covered by the Florida Building Code. Any actions by counties or municipalities not in compliance with this part may be appealed to the Florida Building Commission. The commission, upon a determination that actions not in compliance with this part have delayed permitting or construction, may suspend the authority of a county, municipality, or code enforcement district to enforce the Florida Building Code on the buildings, structures, or facilities of a state university, Florida College System institution, or public school district and provide for code enforcement at the expense of the state university, Florida College System institution, or public school district.

(7)(a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances must be carried forward to future years for allowable

activities or must be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years. For purposes of this subsection, the term "operating budget" does not include reserve amounts. Any amount exceeding this limit must be used as authorized in subparagraph 2. However, a local government that established, as of January 1, 2019, a Building Inspections Fund Advisory Board consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the average of its operating budget for the previous 4 fiscal years may continue to carry such excess funds forward upon the recommendation of the advisory board. The basis for a fee structure for allowable activities must relate to the level of service provided by the local government and must include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged must be consistently applied.

1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, or to pay for the construction of a building or structure that houses a local government's building code enforcement agency or the training programs for building officials, inspectors, or plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than 4 consecutive years. An owner or builder who has a valid building permit issued by a local government for a fee, or an association of owners or builders located in the state that has members with valid building permits issued by a local government for a fee, may bring a civil action against the local government that issued the permit for a fee to enforce this subparagraph.

3. The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

- a. Planning and zoning or other general government activities.
- b. Inspections of public buildings for a reduced fee or no fee.
- c. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.
- d. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in subparagraph 1.

4. A local government must use recognized management, accounting, and oversight practices to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used solely for the purposes described in subparagraph 1.

5. The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

- a. Providing proof of licensure under chapter 489;
- b. Recording or filing a license issued under this chapter;
- c. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440; or
- d. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code.

(b) By December 31, 2020, the governing body of a local government that provides a schedule of fees shall create a building permit and inspection utilization report and post the report on its website. The information in the report shall be derived from relevant information available in the most recently completed financial audit. After December 31, 2020, the governing body of a local government that provides a schedule of fees shall update its

building permit and inspection utilization report before making any adjustments to the fee schedule. The report shall include:

1. Direct and indirect costs incurred by the local government to enforce the Florida Building Code, including costs related to:
 - a. Personnel services costs, including salary and related employee benefit costs incurred by the local government to enforce the Florida Building Code.
 - b. Operating expenditures and expenses.
2. Permit and inspection utilization information, including:
 - a. Number of building permit applications submitted.
 - b. Number of building permits issued or approved.
 - c. Number of building inspections and reinspections requested.
 - d. Number of building inspections and reinspections conducted.
 - e. Number of building inspections conducted by a private provider.
 - f. Number of audits conducted by the local government of private provider building inspections.
 - g. Number of personnel dedicated by the local government to enforce the Florida Building Code, issue building permits, and conduct inspections.
 - h. Other permissible activities for enforcing the Florida Building Code as described in subparagraph (a)1.
3. Revenue information, including:
 - a. Revenue derived from fees pursuant to paragraph (a).
 - b. Revenue derived from fines pursuant to paragraph (a).
 - c. When applicable, investment earnings from the local government's investment of revenue derived from fees and fines pursuant to paragraph (a).
 - d. Balances carried forward by the local government pursuant to paragraph (a).
 - e. Balances refunded by the local government pursuant to paragraph (a).
 - f. Revenue derived from other sources, including local government general revenue.

(c) The governing body of a local government that issues building permits may charge a person only one search fee, in an amount commensurate with the research and time costs incurred by the governing body, for identifying building permits for each unit or subunit assigned by the governing body to a particular tax parcel identification number.

(8) Effective January 1, 2023, local governments located in areas designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole may not raise building inspection fees, as authorized by s. 125.56(2) or s. 166.222 and this section, before October 1, 2024. This subsection expires June 30, 2025.

(9) The Department of Agriculture and Consumer Services is not subject to local government permitting requirements, plan review, or inspection fees for agricultural structures, such as equipment storage sheds and pole barns that are not used by the public.

(10) A single-family or two-family dwelling that is converted into a certified recovery residence, as defined in s. 397.311, or a recovery residence, as defined in s. 397.311, that has a charter from an entity recognized or sanctioned by Congress does not have a change of occupancy as defined in the Florida Building Code solely due to such conversion.

History.—s. 11, ch. 74-167; s. 3, ch. 75-111; s. 5, ch. 77-365; s. 3, ch. 85-97; s. 805, ch. 97-103; ss. 50, 51, ch. 98-287; ss. 85, 86, ch. 2000-141; ss. 34, 35, ch. 2001-186; ss. 3, 4, ch. 2001-372; s. 87, ch. 2002-1; s. 27, ch. 2002-20; s. 12, ch. 2005-147; s. 64, ch. 2006-1; s. 15, ch. 2008-191; s. 37, ch. 2010-176; s. 127, ch. 2014-17; s. 276, ch. 2014-19; s. 23, ch. 2014-154; s. 21, ch. 2016-129; s. 10, ch. 2017-149; s. 7, ch. 2019-75; s. 3, ch. 2019-121; s. 6, ch. 2021-128; s. 5, ch. 2021-201; s. 4, ch. 2021-212; s. 6, ch. 2022-136; s. 13, ch. 2023-304.

Barfield v. Town of Jupiter Inlet Colony

Circuit Court of the Fifteenth Judicial Circuit of Florida, Palm Beach County

May 22, 2012, Decided

CASE NO. 2007 CA 001901 MB

Reporter

2012 Fla. Cir. LEXIS 14947 *

RICHARD D. BARFIELD and MARILYN BARFIELD,
Plaintiff(s), v. TOWN OF JUPITER INLET COLONY, et
al., Defendant(s).

Subsequent History: Affirmed by Barfield v. Town of
Jupiter Inlet Colony, 145 So. 3d 106, 2013 Fla. App.
LEXIS 9766 (Fla. Dist. Ct. App. 4th Dist., June 20, 2013)

Judges: [*1] JANIS BRUSTARES KEYSER, CIRCUIT
JUDGE.

Opinion by: JANIS BRUSTARES KEYSER

Opinion

FINAL JUDGMENT AS TO COUNT IX FOR DECLARATORY RELIEF

THIS CAUSE came before the Court on a non-jury trial held from February 6, 2012, through February 8, 2012. The Court received evidence, heard testimony and arguments of counsel, and being otherwise fully advised in the premises, finds as follows:

Plaintiffs have made four claims in Count IX. First, Plaintiff's claim that sections 4-2, 4-9, and 4-10 are illegal and unenforceable because they conflict with provisions of the Florida Building Code or were not transmitted to the Florida Building Commission. Second, Plaintiff's claim that the Town's building permit fee structure is illegal and unenforceable. Third, Plaintiff's claim that the time provision for completing construction in section 4-2 is not rationally related to a legitimate governmental interest and, therefore, facially unconstitutional, illegal, and unenforceable. Finally, Plaintiff's claim that Commissioners Comerford and Pierson illegally issued stop-work orders to them for failing to pay renewal permit fees.

STATEMENT OF FACTS

1. The Town of Jupiter Inlet Colony (the Town) is a small municipality located at the southern tip of Jupiter Island [*2] in Palm Beach County. The Town is a residential area consisting of approximately 235 single family homes.

2. The Town is governed by a five-member Commission, who volunteer their services, which includes a Mayor, Vice-Mayor, and three other Commissioners. The Town has traditionally employed one full-time, non-police, employee. The five elected officials who serve on the town Commission perform various municipal duties to assist in the carrying out of the municipal functions. One such position is the Building and Zoning Commissioner.

3. In February 2003, Plaintiff, Marilyn Barfield, was elected to the Jupiter Inlet Colony Commission and was subsequently appointed by the Commission to act as "Building and Zoning Commissioner."

4. Section 553.80(7), Florida Statutes, provides that the governing bodies of local governments may provide a schedule of reasonable fees for permitting and inspection services based on estimates of the anticipated costs associated with their enforcement of the Florida Building Code.

5. In May 2003, the Town adopted Resolution 85-150-194, which established the Town's building permit fee structure. Pursuant to the resolution, the permit fees are charged at a rate of 3% of the contract amount or reasonable [*3] construction value (if there is no contract). The Town's fee structure is similar to the Town of Palm Beach and Boca Raton.

6. The Town does not have a building department. From 2003 through 2008, the Town contracted with the City of Tequesta to provide a licensed building official to review building plans and permit applications for compliance

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with the Florida Building Code. Tequesta's building official also performed all building related inspections within the Town. From September 2008, the Town entered into an agreement with Bureau Veritas to provide a licensed building official to perform these services pertaining to construction projects within the town limits.

7. The Town adopted the Florida Building Code as its building code and uses monies received from the permit fees to fund its enforcement of the Florida Building Code.

8. The Barfields purchased their home in the Town in 1993. In May 2005, the Barfields submitted plans to construct a 10,225 square foot home on their property at 103 Lighthouse Drive in Jupiter Inlet Colony, approximately 7,000 square feet of which was to be under air. Plaintiffs applied for a building permit as "owner/builders" and represented that the value [*4] of the work to be performed in constructing their home was \$400,000. The Town accepted Plaintiffs' estimate of building costs and on August 22, 2005, Plaintiffs were issued a building permit to construct their new home, and construction began.

9. Pursuant to section 4-2 of the Town Code of Ordinances, building construction must be completed within twelve (12) months, and if construction is not completed within that time, a property owner must obtain a renewal permit to continue such construction. The renewal permit fee is 3% of the contract price or the value of construction, and after the fee is paid, construction may continue for an additional six (6) months. The Town adopted section 4-2 because it wanted construction to be completed in an expeditious manner.

10. The Town has a reconciliation process at the end of construction to ensure that a property owner only pays 3% of the entire construction costs. The Town asks for a copy of contracts, receipts, and invoices of all work done on the property and then tries to reconcile it with the value that was posted at the beginning of the job. If there is any difference, then the Town either refunds excess fees, or charges an additional fee [*5] to ensure the total is 3%.

11. The Building and Zoning commissioner does not review building plans or permit applications for compliance with the Florida Building Code. Instead, the Town contracts with a licensed building official to review the building plans and permit applications for compliance with the Florida Building Code.

12. Section 4-9 of the Town Code provides that no certificate of occupancy shall be issued by the Town until the owner submits "as built" plans demonstrating

compliance with the Town's Zoning Code, including building set-back requirements and building height restrictions. Section 3 of the Zoning Code describes the powers and authority of the Building and Zoning Commissioner and provides that "the building and zoning commissioner shall be charged with the administration and enforcement of the provisions of this zoning code as agent of and acting under the direction of the commission of Jupiter Inlet Colony."

13. The Building and Zoning Commissioner reviews plans for compliance with zoning, aesthetic and land use regulations. Section 4-9 does not require the Building and Zoning Commissioner to review the "as built" plans for compliance with the Florida Building Code.

14. The Florida Building [*6] Code and the Town's zoning regulations are separate and distinct from one another. The Florida Building Code does not apply to zoning regulations which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings.

15. Section 4-10 of the Town Code requires the Building and Zoning Commissioner to review all applications for building permits to evaluate any and all zoning restrictions, i.e., set-backs, building height or elevation, and grade or lot coverage, prior to the issuance of the permit. Section 4-10 does not require the Building and Zoning Commissioner to review the permit applications for compliance with the Florida Building Code.

16. Commissioners Comerford and Pierson have issued stop work orders for failure to obtain a renewal permit and for working without a valid permit. Following the issuance of a stop work order for non-payment of a permit extension fee, a property owner is only required to pay the fee before continuing with the work.

CONCLUSIONS OF LAW

Section 4-2 of the Town Code is Rationally Related to a Legitimate Governmental Interest

Section 4-2 of the Town Code provides that "construction authorized by a building permit issued by the municipality shall be completed within 12 months [*7] from the date of the initial permit." Section 4-2 further provides that "if a holder of a building permit shall not have completed the requirements of the issuance of a certificate of occupancy as to the residence only, and not with regard to any landscaping, within the dates set forth above, then it shall

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be necessary to make application for a renewal permit to continue such construction." Plaintiffs argue that "the time limitation in Town Code 4- 2 bears no rational relationship to health, safety, and welfare of the Town's residents."

The Town presented the testimony of three Commissioners, Douglas Pierson, Daniel Comerford, and John Zuccarelli. Uniformly, the three Commissioners explained that the Town was a small, single-family, residential municipality which is completely "built out." The three Commissioners explained that it is important to the Town residents that property owners complete their construction as expeditiously as possible in order to limit the harms which arise out of half-completed construction. The Town also presented the testimony of Town Attorney William Doney (who drafted section 4-2) and Mr. Doney confirmed the testimony of the three Commissioners and explained that construction [*8] is "very disruptive" to the neighbors. Mr. Doney testified that section 4-2 was created as a financial incentive to speed up construction so that disruption does not continue indefinitely.

The cases of *Greenbriar Village LLC v. City of Mountain Brook*, 345 F.3d 1258 (11th Cir. 2003), and *Spence v. Zimmerman*, 873 F.2d 256, 262 (11th Cir. 1989), are particularly instructive. In *Greenbriar*, the Eleventh Circuit specifically addressed time limitations relating to the length of a building permit and found that such a limitation bore a rational relationship to a legitimate government interest:

The avoidance of the harms attendant to half-completed construction is a constitutionally permissible objective for a municipality when enforcing its building code. When construction on or development of a property is not completed in an expeditious manner, all types of costs accrue to the community at large: rodents, transients, sand erosion or vandals, injuring the surrounding neighborhood economically, environmentally, and aesthetically. For these reasons, a City could rationally conclude that the building code did not intend for a building permit, once issued, to continue indefinitely. Even though there was no time limit expressed, the City could rationally interpret the Code to require that permitted construction must be substantially completed within [*9] a reasonable time of the permit's issuance.

345 F.3d at 1263-64 (internal citations and quotations omitted); see also *Spence*, 873 F.2d at 260 ("The City could rationally conclude that the building code did not intend for a building permit, once issued, to continue

indefinitely. Even though there was no time limit expressed, the City could rationally interpret the Code to require that permitted construction must be substantially completed within a reasonable time of the permit's issuance.")

Here, the Town presented testimony demonstrating that section 4-2 was established for the very reasons enumerated in *Greenbriar* and *Spence*. The Town's Commissioners and residents believed that it was important for construction projects to be completed in an "expeditious manner." The Town adopted section 4-2 to limit the time and impact of "harms attendant to half-completed construction." For these reasons the Court finds section 4-2 is rationally related to a legitimate governmental interest.

Chapter 4 does not conflict with the Florida Building Code

"A regularly enacted ordinance will be presumed to be valid until the contrary is shown, and a party who seeks to overthrow such an ordinance has the burden of establishing its invalidity." *Lowe v. Broward Cty.*, 766 So. 2d 1199, 1203 (Fla. 4th DCA 2000). In order for the Court to find that there is a conflict [*10] between the Florida Building Code and the Town Code, both "must contradict each other in the sense that both the legislative provisions (the ordinance and the statute) cannot co-exist." *F. Y.I. Adventures, Inc. v. City of Ocala*, 698 So. 2d 583, 584 (Fla. 5th DCA 1997). In other words, "[t]hey are in 'conflict' if, in order to comply with one, a violation of the other is required." *Id.*

As discussed above, section 4-2 of the Town of Jupiter Inlet Colony Code requires a resident to finish the construction within twelve (12) months or to pay a renewal fee. Section 4-2 has no effect whatsoever on the validity of the building permit. Section 4-2 simply requires a permit holder to complete his construction within twelve (12) months, or pay an additional fee. **Section 553.80(7), Florida Statutes**, expressly provides that "[t]he governing bodies of local governments may provide a schedule of

Plaintiffs argue that section 4-2 conflicts with sections 105.4.1 and 105.4.1.3 of the Florida Building Code. Section 105.4.1 provides:

A permit issued shall be construed to be a license to proceed with the work and not as authority to violate, cancel, alter or set aside any of the provisions of the technical codes, nor shall issuance of a permit

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prevent the building official from thereafter requiring a correction of errors in plans, construction or violations of this code. Every permit issued shall be come invalid unless [*11] the work authorized by such permit is commenced within six months after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of six months after the time the work is commenced.

Section 105.4.1.3 provides:

Work shall be considered to be in active progress when the permit has received an approved inspection within 180 days. This provision shall not be applicable in case of civil commotion or strike or when the building work is halted due directly to judicial injunction, order or similar process.

The Florida Building Code provides that a permit becomes "null and void" if the work does not receive an approved inspection within 180 days. See section 104.1.1 ("If work has commenced and the permit is revoked, becomes null and void, or expires because of lack of progress or abandonment, a new permit covering the proposed construction shall be obtained before proceeding with the work."). At that time, a property owner/contractor is required to submit new building plans and undergo a new plan review. Section 4-2 does not provide that a building permit becomes "null and void."

Section 4-2 does not call for or require a new building permit application and plan review [*12] for a renewal permit. Section 4-2 only requires the payment of a fee. Section 105.4.1.4 of the Florida Building Code provides that "[t]he fee for renewal reissuance and extension of a permit shall be set forth by the administrative authority." For the above stated reasons, the Court concludes that section 4-2 does not conflict with the Florida Building Code.

Sections 4-9 and 4-10 do not conflict with the Florida Building Code, as they pertain solely to zoning requirements. Specifically, section 4-9 provides that no certificate of occupancy shall be issued by the Town until the owner submits "as built" plans demonstrating compliance with the Town's Zoning Code, including building set-back requirements and building height restrictions. Similarly, section 4-10 provides that the Building and Zoning Commissioner shall review all applications for building permits to evaluate any and all zoning restrictions, i.e., set-backs, building height or elevation, and grade or lot coverage, prior to the issuance of the permit. Such requirements and zoning regulations are not governed by the Florida Building Code. Section 102.1.1, of the Florida Building Code provides:

The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use [*13] requirements and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alterations, modification, repair or demolition of public or private buildings, structures or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. . . ."

For the foregoing reasons, the Court finds that enforcement of sections 4-9 and 4- 10 for zoning issues does not conflict with enforcement of the Florida Building Code.

Plaintiffs argue that sections 4-2, 4-9, and 4-10 are amendments to the Florida Building Code subject to section 553.73(4), Florida Statutes, and that the Town's failure to transmit them to the Florida Building Commission within thirty (30) days of adoption render them illegal, void or unenforceable. Plaintiffs, however, cite no authority in support of this argument, which is therefore rejected by this Court. Moreover, the town attorney, William Doncy, testified that amendments to section 4 were not forwarded to the Florida Building Commission because they were not considered to be either a technical or administrative amendment to the Florida Building Code.

The Town's Permit Fee Structure is not Vague or Arbitrary

The Florida Legislature has provided for [*14] the codification of minimum statewide standards for buildings, structures, and facilities in the Florida Building Code, and has charged counties and municipalities with the task of enforcing the Code within their jurisdictions. See Part IV, Chapter 553, Florida Statutes (Section 553.70-553.898). To that end, the legislature has directed the counties and municipalities in Florida to issue building permits, inspect construction work, and assure that structures built, repaired, or modified within their jurisdiction are all in full compliance with the Florida Building Code. *Id.* In an effort to defray the costs associated with this mandate, and to prevent passing those costs on to the taxpayers, the legislature has authorized counties and municipalities to issue a schedule of fees for permitting and inspection services based on estimates of the anticipated costs associated with their enforcement of the Florida Building Code. See **Section 553.80(7), Florida Statutes**; Section 108.1,

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Florida Building Code (a permit shall not be issued until fees authorized under **section 553.80, Florida Statutes**, have been paid). The legislature has not provided municipalities with any specific direction or instruction as it relates to the setting of the permit fees. The only requirement is that the fees be reasonable. See **section 553.80(7), Florida Statutes** ("the governing bodies of local governments [*15] may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part.").

The Court finds that the Town's permit fee schedule is reasonable. Resolution No. 85-150-194 established the Town's fee structure and requires payment of a fee equal to 3% of the construction cost in order to obtain a building permit. The "amount is based on contract or the fair and reasonable construction value of the proposed work to be accomplished in the Colony." The resolution ensures that a property owner pays 3% of the total amount of construction (or the reasonable construction value). It was undisputed at trial that municipalities frequently utilize the "percentage based" fee structure. Here, the Town charges a flat fee of 3% of the construction cost.

Plaintiffs also argue that the resolution is invalid because "the Town also requires each subcontractor to pay a 3% fee of the value of a subcontract as a building permit fee." However, the Town presented evidence that it only charges sub-permit fees when the cost of the work was not included within the master permit. The permit application explicitly instructs a contractor/property owner not to pay [*16] a fee for the sub-permit if the value of the work was included within the master permit. Furthermore, the Town has a reconciliation process related to the permit fee to ensure that the property owner only pays 3% of the total construction cost. For the above stated reasons, the Court finds that the Town's permit fee structure is reasonable.

The Town is required to perform an Audit of the Building Permit Fees

The legislature has provided that any money collected for building permit fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. See **section 553.80(7), Florida Statutes**. Under Florida law, the Town is permitted to cost out direct and indirect costs related to the enforcement of the Florida Building Code. The Town conceded at trial that some of the costs it applied to the building permit fees might not have been valid. As a result, the Court will require the Town to prepare an

accounting by an independent auditor, at its expense, of the most recent five (5) years of building permit fees in accordance with **section 553.80, Florida Statutes**. Plaintiffs shall be provided a copy of the accounting and supporting materials within sixty (60) days.

The legislature has provided that in the [*17] event the revenue generated from enforcement activity fees exceeds the projected and estimated cost of enforcement (i.e., there is a revenue surplus), municipalities have the discretion to either (1) refund unexpended balances, or (2) allocate unexpended balances to future activities related to enforcement of the Florida Building Code. The decision is exclusively a matter of local government discretion. *North Ridge Elec, Inc. v. City of Sunrise*, 63 So. 3d 937 (Fla. 4 DCA 2011). Specifically, **section 553.80(7), Florida Statutes** provides:

The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure [*18] for allowable activities shall be related to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

In *North Ridge*, the plaintiffs asked the court to declare that the city's practice of collecting excessive building permit and inspection fees, the excess of which was not returned to the contractors but placed in the city's general fund, was contrary to the provisions of **section 553.80, Florida Statutes** (2009), which require any excess funds to be refunded or used solely for the purposes of carrying out enforcement of the building code. *Id.* at 938. The plaintiffs also requested restitution of excessive fees. *Id.* The city opposed class certification on grounds that even if the fees charged by the city did exceed the actual costs

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of enforcement, the statutes, specifically section 553.80(7), expressly gave the city the discretion to either refund the excess or allocate those funds to future allowable activities. *Id.* The trial court denied class certification because section 553.80(7) gave the city the discretion of either refunding the excess or allocating the [*19] excess to allowable activities, that choice being given to the municipality, according to statute. *Id.* The Fourth District affirmed and concluded that "a declaratory decree finding that the City violated the statute would be uniformly applicable, and the City would have to abide by the terms of the statute by either refunding excessive fees or allocating those funds to allowable activities." *Id.*

/s/ Janis Brustares Keyser

JANIS BRUSTARES KEYSER

CIRCUIT JUDGE

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The Court orders the Town to perform an audit of the most recent five (5) years of building permit fees in accordance with section 553.80, Florida Statutes. Pursuant to section 553.80, Florida Statutes, in the event there is any surplus, the Town must decide whether it will carry those monies forward to future years of allowable activities or refund the surplus. See section 553.80(7), Florida Statutes; *North Ridge*, supra.

The Stop Work Orders Are Valid

Finally, the Court finds that the Town Commissioners have the right to issue stop work orders for violations of the Town's ordinances. It is undisputed that the Town Commissioners have only issued stop work orders for matters which relate to the permit fees. Such matters are not governed by the Florida Building Code, and the Court finds that the Commissioners have lawfully issued the stop work orders. Other jurisdictions have previously decided that governmental [*20] entities are authorized to issue stop work orders for violations of municipal ordinances and regulations. See, e.g., *Sundstrom v. Collier County*, 385 So. 2d 1158 (Fla. 2d DCA 1980) (finding that a zoning director may issue a "stop-work order" to a property owner whose activities are in violation of the county's zoning regulations); *J-II Investments, Inc. v. Leon County*, 908 So. 2d 1140 (Fla. 1st DCA 2005) (an environmental compliance officer is authorized to place a "stop-work order" on a property if he or she observes unpermitted development activity).

For these reasons, the Court concludes that with the exception of the audit the Town is required to perform pursuant to the terms of this order, Plaintiffs have failed to establish an entitlement to declaratory relief.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 22 day of May, 2012.