

Regular Workshop – May 20, 2013  
Agenda Item 15

**Agenda Item:** Discussion Regarding Process for Town Commission to Declare Conditions Exist for Condemnation

**Presenter:** Town Manager

**Summary:** At the April 24, 2013 Special Workshop Meeting the Town Commission requested the Town Attorney and staff to prepare information regarding the process of declaring condemnation of a nuisance or dangerous property. The Town Attorney and staff will outline the required steps for a condemnation process under provisions of the Town Code and Florida Statutes.  
a: Pursuant to Town Code, Sections 150.21 and 150.22  
b: Pursuant to Florida Statutes, Sections 166.401 and 166.411

**Attachments:** 4-30-13 Letter, Town Attorney to Manager;  
PowerPoint Presentation.

**Recommended Action:** None, informational only.

# Hankin, Persson, McClenathen, Cohen & Darnell

Attorneys and Counselors At Law

Lawrence M. Hankin  
David P. Persson  
Chad M. McClenathen\*  
Andrew H. Cohen  
Robert W. Darnell  
Michael T. Hankin  
Kelly M. Fernandez\*\*  
Maggie D. Mooney-Portale\*\*\*

David D. Davis (1955-2012)

Telephone (941) 365-4950

Facsimile (941) 365-3259

Email: [mmooney-portale@sarasotalawfirm.com](mailto:mmooney-portale@sarasotalawfirm.com)

April 30, 2013

\* Board Certified Real Estate  
\*\* Board Certified State and Fed. Govt. & Admin. Practice  
\*\*\* Board Certified City, County and Local Government Law

Reply to: *Sarasota*

The Honorable James L. Brown, Mayor  
and Members of Town Commission  
Town of Longboat Key  
501 Bay Isles Road  
Longboat Key, Florida 34228

RE: Colony – Condemnation Options

Dear Mayor Brown and Town Commissioners:

At the workshop on April 24, 2013, a question was posed requesting that the Town Attorney and Town Manager advise the Town Commission regarding the Town's condemnation options relating to the Colony property. To the extent the Town would like to explore condemnation as an option for the Colony property, the Town's options are controlled by Florida Statutes.

The Town has been delegated the right from the Florida Legislature to exercise the power of eminent domain for municipal purposes or uses. Fla. Stat. §§166.401, 166.411. A listing of the authorized municipal uses or purposes provided for by statute are:

- (1) For drainage, ditching, grading, filling or other public improvements deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality ;
- (2) For municipal and private corporation public work projects over railroads, traction and streetcar lines, telephone and telegraph lines, streets, highways, drainage districts, bridge districts, school districts, or other public or private lands;
- (3) For streets, lanes, alleys, and ways;
- (4) For public parks, squares, and grounds;
- (5) For drainage, for raising or filling in land in order to promote sanitation and healthfulness;

---

Sarasota  
1820 Ringling Blvd.  
Sarasota, Florida 34236

Venice  
217 Nassau Street S.  
Venice, Florida 34285

- (6) For reclaiming and filling when lands are low and wet;
- (7) For the use of water pipes and for sewerage and drainage purposes;
- (8) For laying wires and conduits underground; and
- (9) For city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain.

See, Fla. Stat. §§166.411, 180.22.

In 2006, following the U.S. Supreme Court's decision in *Kelo v. City of New London Connecticut*, 545 U.S. 469 (2005), the Florida Legislature adopted several amendments to Florida's eminent domain laws that limited a local government's ability to use the power of condemnation. Specifically, in 2006, the Florida Legislature adopted Florida Statutes §73.014 that eliminated public nuisance abatement as a valid public purpose for the taking of property by eminent domain. See, Fla. Stat. §73.014(1). The same statute also eliminated the prevention of nuisance, slum and blight as valid public purposes. See, Fla. Stat. §73.014(2). The statute does not prevent the Town from adopting ordinances to control public nuisances as long as such ordinances do not permit the use of eminent domain to address such conditions.

The same Legislature in 2006 also adopted Florida Statutes §73.013 which prohibited condemned property from being conveyed to a private entity within ten (10) years of the government's condemnation. Fla. Stat. §73.013. The intent and purpose of that legislation was to prevent the taking of private property for other private use and to limit the property of eminent domain for only public use. Fla. Stat. §73.013(1).

Accordingly, it is our opinion that Florida's eminent domain laws permit the Town to condemn the Colony property for certain enumerated public purposes (i.e., to become a public park, for the construction of a town building/recreational facility, a golf course, etc.). Further, should the Town condemn the property for an enumerated public purpose and then choose to later convey the property to a private party, the Town will be required to hold the property for at least ten (10) years, after which time the property can then be publicly advertised and competitively bid. See, Fla. Stat. §73.013(1)(g). Under current Florida law, the Town is not permitted to condemn the Colony property for purposes of correcting a slum or blight condition, or to prevent a public nuisance. See, Fla. Stat. §73.014.

We would be happy to discuss this opinion and these options with you at the May 6, 2013, meeting.

Respectfully,

  
Maggie D. Mooney-Portale

MDMP/dgb

cc: Dave Bullock, Town Manager

TOWN OF LONGBOAT KEY



# CONDEMNATION DETERMINATION AND PROCESS

TOWN COMMISSION REGULAR MEETING  
MAY 20, 2013



## TWO TYPES CONDEMNATION

- **Building, Structure, or Portion Thereof**
- **Property**



## TWO PROCEDURES FOR CONDEMNING A BUILDING IN TOWN CODE

- **Dangerous or Unsanitary Buildings,  
Section 150.21**
- **Public Nuisance Buildings, Section 150.22**



## **DANGEROUS OR UNSANITARY BUILDINGS AUTHORITY DIVISION (SECTION 150.21)**

- **Building Official**
  - Inspects Buildings
  - Determines Building or Structure
    - Dangerous to Health or Human Life
    - Fire Hazard
    - Unsanitary
  - Post Building – Occupancy/Use Prohibited
- **Town Commission and Town Manager**
  - No Action Necessary



## **DANGEROUS OR UNSANITARY BUILDINGS STEP ONE (SECTION 150.21)**

- **Building Official Determines a Building is Dangerous or Unsanitary By Way Of**
  - **It's Use**
  - **Abandonment**
  - **Dilapidation**
  - **Fire Hazard**
  - **Unsanitary Condition**
  - **Danger to Health or Life**



## **DANGEROUS OR UNSANITARY BUILDINGS STEP TWO (SECTION 150.21)**

- **Building Official Notifies Owner, Agent, or Person in Control of Building**
  - **Provides Timeline to**
    - **Complete Specified Repairs or Improvements**
    - **Demolish and Remove**
  - **Requires Vacation if Necessary for Preservation of Life, Safety, or Health**



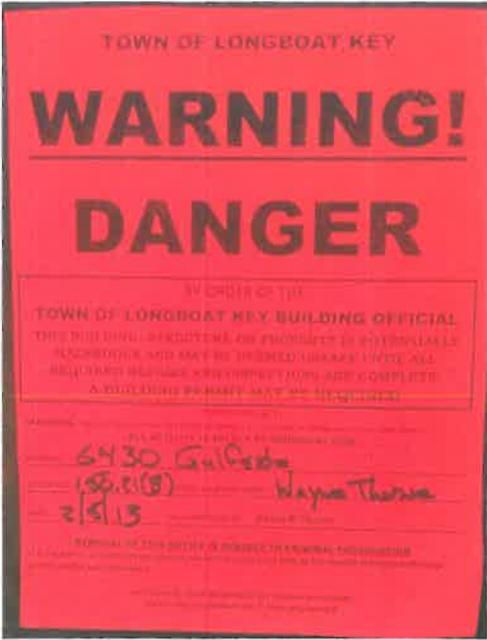
## **DANGEROUS OR UNSANITARY BUILDINGS STEP THREE (SECTION 150.21)**

- **Building Official Posts Notifications on Building Entrances**
  - **Unsafe Building**
  - **Occupancy Prohibited or Limited**
  - **Require Repair or Demolition**



# DANGEROUS OR UNSANITARY BUILDINGS RECENT BUILDING OFFICIAL DETERMINATIONS PER SECTION 150.21

- Colony Mid-Rise Building, Floor Joist Failure
  - May Be Unsafe
  - Enter at Own Risk
  - Repairs Required
- 733 Lands End, Fire Damage
  - Demolition Required
- 6430 Gulfside Drive, Fire Damage
  - Repairs Required to Reoccupy





## **PUBLIC NUISANCE BUILDINGS AUTHORITY DIVISION (SECTION 150.22)**

- **Building Official**
  - Inspects Buildings
  - Deems Dangerous Structure / Public Nuisance
  - Reports Details and Opinion to Town Commission
- **Town Manager**
  - Coordinate Property Owner Notifications
  - Assist with Building Official Presentation at Public Hearing
- **Town Commission**
  - Adopt Resolution to set Public Hearing
  - Conduct Public Hearing to Review Evidence of Public Nuisance
  - Adopt Resolution Declaring Required Action



## **PUBLIC NUISANCE BUILDINGS STEP ONE (SECTION 150.22)**

- **Building Official Determination of a Dangerous Structure**
  - Interior Walls List or Lean
  - Deterioration Thresholds
  - Improperly Distributed Loads
  - Fire, Water, Wind Damage
  - Unfit for Human Habitation
  - Inadequate Light, Air, or Sanitation Facilities
  - Inadequate Fire Egress
  - Threatening Public or Property
  - Threatening Abutting Property
  - Dangerous or Unsanitary
  - Violates Building or Fire Code



## **PUBLIC NUISANCE BUILDINGS STEP TWO (SECTION 150.22)**

- **Dangerous Structure Action Standards for Town Commission and Town Manager to Follow**
  - **Repair -- if Reasonably Feasible**
  - **Vacate – if Dangerous to Health, Safety, or Welfare**
  - **Demolish**
    - **50% Damaged, Deteriorated from Original Value or Structure**
    - **Can't Repair to Non-violation Status**
    - **Fire Hazard Existing or Erected in Violation of Code**



## **PUBLIC NUISANCE BUILDINGS STEP THREE (SECTION 150.22)**

- **Building Official Reports to Town Commission  
Determination of Dangerous Structure/Public  
Nuisance**
- **Town Commission Reviews Report and Finds a  
Public Nuisance May Exist**



## **PUBLIC NUISANCE BUILDINGS STEP FOUR (SECTION 150.22)**

- **Town Commission Adopts Resolution to Set Public Hearing**
- **Property Owner Notified of Public Hearing**



## **PUBLIC NUISANCE BUILDINGS STEP FIVE (SECTION 150.22)**

- **Town Commission Conducts Public Hearing**
- **Property Owner May Provide Evidence Showing Public Nuisance Doesn't Exist**



## **PUBLIC NUISANCE BUILDINGS STEP SIX (SECTION 150.22)**

- **Town Commission Adopts Resolution Declaring One or More of the Following**
  1. **Conditions Alleged Do Not Exist**
  2. **Conditions Do Not Constitute Public Nuisance**
  3. **Conditions Alleged Have Been Remedied**
  4. **Building or Structure is a Public Nuisance and Condemned**
  5. **Provisions to Decide or Determine Issues**
  6. **Description of Public Nuisance Conditions**
  7. **Provide Timeline for Owner Abatement or Town will Abate or File Suit**



**End of Agenda Item**