

Prepared By and Return to:
James C. Brady, Esq.
Arnstein & Lehr LLP
200 E. Las Olas Blvd., Suite 1700
Fort Lauderdale, FL 33301

DECLARATION OF UNITY OF TITLE

THIS DECLARATION OF UNITY OF TITLE, made this 14 day of May, 2013, by Philip G. Mavon, Jr., hereinafter referred to as "OWNER" of the property herein described, whose mailing address is 831 Solar Isle Drive, Fort Lauderdale, Florida, is required by the City of Fort Lauderdale, a municipal corporation, hereinafter referred to as "CITY," pursuant to a motion made and adopted at the regular meeting of the City Commission of May 7, 2013, in order to effectuate a settlement of certain disputes:

WHEREAS the OWNER is the owner of the following described real property located within the City of Fort Lauderdale:

Lot 1 and the east half of Lot 2, of Block 4, RIVIERA, according to the Plat thereof as recorded in Plat Book 6, Page 17, of the Public Records of Broward County, Florida, ("Parcel One"), and

The south 25' of the west 25' of Lot 4, Block 4, RIVIERA, according to the Plat thereof, as recorded in Plat Book 6, Page 17, of the Public Records of Broward County, Florida, ("Parcel Two"),

and

WHEREAS, the CITY, as a condition resolving certain issues raised in Philip G. Mavon, Jr. v. City of Fort Lauderdale, filed in the Circuit Court of the 17th Judicial Circuit In and For Broward County, Case No. CACE 12-03298 (03), requires that title and use of Parcel One and Parcel Two be unified for use as a single-family residence, with non-commercial boat moorage facility as an accessory use thereto, to be considered and treated as one plot and parcel of land to remain under one ownership, and



WHEREAS, this Declaration is made as a product of a compromise and settlement, and the same is supported by adequate consideration received and enjoyed by OWNER, and

WHEREAS, the OWNER agrees that said requirement of the CITY is in the best interests of all the parties and serves to promote the general welfare, safety and convenience of the public, and the OWNER hereby releases, waives and forever discharges any claim, demand, cause of action and right it may have against the CITY relative to the litigation identified in the preamble hereto,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the OWNER declares as follows:

1. The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Declaration.
2. The title to Parcel One and the title to Parcel Two shall be considered unified as one plot and parcel of land, and no portion of either Parcel One or Parcel Two shall be sold, transferred, deposited or assigned separately, except with the other as an entirety as one plot or parcel of land, or as undivided interest in said Parcels, it being the intention hereof that the use of Parcel Two shall be accessory to Parcel One.
3. The use of Parcel Two shall be limited to the berthing of a vessel(s) as an accessory use to the principal structure and principal use on Parcel One in the same manner as an accessory dock or slip located in an RS-8 zoning district and as if Parcels One and Two were contiguous each to the other.
4. It is expressly understood and agreed that the terms, covenants, and conditions of this Declaration shall be and constitute covenants running with the land and said Parcels, binding upon subsequent purchasers, heirs, successors and assigns of Parcel One and Parcel Two, and the same shall constitute an obligation upon said property, regardless of transfer of title or ownership.
5. It is the intention of the OWNER that this Declaration shall be recorded in the Public Records of Broward County, Florida.



6. This instrument shall not be modified, amended or released without first obtaining the written consent of the City Commission of the City of Fort Lauderdale as to any portion of the property, and, then, only by a written instrument executed by the owner of the fee simple title to such Parcels.
7. This instrument shall become effective upon its recordation in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF, the OWNER has hereunto set his hand and seal the day and year first above written.

WITNESSES:

OWNER: PHILIP G. MAVON, JR.

Catrina Letto-Lynch
Signature

Catrina Letto-Lynch
Print/Type Name

Robert C Smith
Signature

Robert C Smith
Print/Type Name

By Philip G. Mavon, Jr.
Signature

STATE OF ILLINOIS)

COUNTY OF COOK)

The foregoing instrument was acknowledged before this 14th day of May, 2013, by Philip G. Mavon, Jr., who is personally know to me or who has produced _____, as identification and who did (did not) take an oath.

Thomas E. Hoffman
Notary Public - STATE OF ILLINOIS

My Commission Expires: 11/19/14

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AFFIDAVIT

STATE OF FLORIDA COUNTY OF VOLUSIA

Before me, a Notary Public, personally appeared Harry A. Stewart ("Affiant") who, upon being sworn, deposes and says:

1. That this Affidavit is made for the purpose of restating my legal opinions, regarding whether the property located at 831 Solar Drive, Fort Lauderdale (the "Mavon Property"), as joined by Unity of Title, as filed and recorded by the Property Owner met the requirements of ULDR Section 47-19.3, Code of Ordinances, City of Fort Lauderdale. The opinions expressed were based on the arguments made, the evidence presented and the applicable law at that time.
2. Affiant was the Fort Lauderdale City Attorney on May 7, 2013, and was in attendance as City Attorney at the City Commission meeting involving the Mavon Property as owned by Philip G. Mavon Jr. (the "Property Owner") and the discussion and approval of the Motion to "Authorize Appeal of Court Order issued against the City" ("the Motion").
3. Affiant is familiar with: (i) the "Minutes note" as published by the City Clerk under File #13-061, as a record of the discussion and the Motion, as approved by the Commission (the "Motion"), and (ii) the Declaration of Unity of Title (the "Unity of Title"), dated May 14, 2013. As approved by the City Attorney prior thereto, and filed by the Property Owner, as recorded in the public records of Broward County on 5/15/2013 (copy attached hereto and marked "Exhibit 1").
4. Affiant states, that consistent with the opinions expressed by his responses to the questions from the City Commissioners, that: (i) the Court Order, as entered by the Broward County Circuit Court (Case no, 12-003298.03), (copy attached hereto and marked "Exhibit 2) found that the Mavon Property was entitled to a final inspection to confirm that construction met the requirements of the permit issued by the City; and that (ii) by clear implication the Unity of Title, as filed by the Property Owner and the Court Order satisfied the City requirement for a principle structure, contemplated by ULDR Section 47-19.3, which required a "principle building" to exist on property as a prerequisite for the issuance of dock permit at that time.

FURTHER AFFIANT SAYETH NOT

By: [Signature]
Name: Harry A. Stewart

Sworn to and Subscribed before me the 29th day of June, 2022

[Signature]

NOTARY PUBLIC

My Commission Expires 7/30/2024



Exhibit "A"

**** FILED: BROWARD COUNTY,

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

PHILIP G. MAVON, JR.,

Plaintiff,

v.

CITY OF FORT LAUDERDALE, a municipal
corporation of the State of Florida,

Defendant.

CASE NO.: CACE-12-003298(03)
JUDGE: MILY RODRIGUEZ POWELL

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE came before the court on "Plaintiff, Philip G. Mavon, Jr.'s Motion for Summary Judgment," filed on December 7, 2012, and "Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment, and Defendant's Cross-Motion for Final Summary Judgment, Concise Statement of Undisputed Material Facts, and Incorporated Memorandum of Law," filed on February 4, 2013, pursuant to Fla R Civ P. 1.510(b). A hearing on the motions was held on February 11, 2013, and this Court, after having considered the motions, arguments of counsel, the court file, applicable law, and being otherwise fully advised in the premises, finds that:

The function of a motion for summary judgment is to determine whether the parties have offered sufficient proof to support their claims and/or defenses. Bifulco v. State Farm Mut. Auto. Ins. Co., 693 So. 2d 707 (Fla 4th DCA 1997). To obtain a final summary judgment, the moving party must conclusively demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law Fla R Civ P 1.510(c); Holl v. Talcott, 191 So. 2d 40 (Fla 1966). Both parties claim that there are no genuine issues of matter fact. Mavon claims that he is entitled to a judgment of equitable estoppel as a matter of law against the City for its refusal to grant a final inspection and approval of a boat basin built by Mavon pursuant to a permit issued by the City. In opposition, the City claims that equitable estoppel does not apply.

Exhibit ^2 ^

Mavon's property is in two sections, one is a single family residence and one a 25 x 25 foot section used to dock a boat. In 1969, when Mavon's father owned the property, he built a wooden dock on the smaller section, pursuant to a permit issued to him by the City. In 2010, Mavon applied for a permit from the City to remove the existing seawall, excavate and construct a boat basin on the property. Mavon's application was approved by the City and a permit was issued to him on August 3, 2010. Mavon's project to build a basin was also approved by Broward County and the Army Corps of Engineers.

Construction began on the boat basin and on September 3, 2010, Mavon received a letter from the City claiming that, "per City Code 47-19 3B, a boat slip may not be constructed unless a principal structure exists on the lot on which the boat slip is constructed.. " Mavon immediately ceased construction; however, in order to prevent the "severely flooding of our already severely flooded street," Mayor Seiler lifted the hold on the construction project in order for Mavon to secure the seawall. In October, 2010, Mavon applied to the City's Marine Advisory Board for a waiver of the City's principal structure requirement and the board voted unanimously to recommend approval of the application.

A public hearing on the question of the warver was scheduled for December 7, 2010, but was removed from the December 7th agenda and has not been reset. Mavon has made repeated requests to the City to make a final inspection and final approval of the boat basin, but the City has failed to do so. Mavon has incurred substantial costs and made substantial expenditures in excess of \$71,000.00, and has not enjoyed the use of the boat basin since its completion.

The City refuses to make the final inspection that Mavon seeks because it made a "mistake" in issuing the permit because there is no "principal structure" on the property and therefore, it is violation of § 47-19 3 of the City of Fort Lauderdale's Uniform Land Development Code, which provides, in pertinent part:

(c) No boat slips, docks, boat davits, hoists, and similar mooring structures not including mooring or dolphin piles or a seawall, may be constructed by any owner of any lot unless a principal building exists on such lot and such lot abuts a waterway. Mooring structures, not including

mooring or dolphin piles, shall not extend into the waterway more than twenty-five (25) percent of the width of the waterway or twenty-five (25) feet whichever is less as measured from the property line.

(d) Mooring or dolphin piles, shall not be permitted to extend more than thirty (30) percent of the width of the waterway, or twenty-five (25) feet beyond the property line, whichever is less

- (e) The City Commission may waive the limitations of (c) and (d) under extraordinary circumstances, provided permits from all governmental agencies, as required, are obtained after approval of the City Commission, after a public hearing .

ULDR Code § 47-19 3(emphasis added)

It is apparent that the principal building violation of § 47-19.3 could be waived by the City. Mavon has shown at least 13 examples where this section of the ULDR has been waived by the City to accommodate Fort Lauderdale residents.

Mavon asks this Court to apply the doctrine of equitable estoppel against the City. The doctrine of equitable estoppel may be invoked against a governmental entity just as if it were an individual. Castro v. Miami-Dade Cnty Code Enforcement, 967 So 2d 230 (Fla 3d DCA 2007). Equitable estoppel is appropriate where the plaintiff clearly and convincingly proves the following elements

- (1) a property owner's good faith reliance
- (2) on some act or omission of the government and
- (3) a substantial change in position, or the incurring of excessive obligations and expenses, so that it would be highly inequitable and unjust to destroy the right the property owner has acquired

City of Jacksonville v. Coffield, 18 So 3d 589 (Fla 1st DCA 2009)

The doctrine of equitable estoppel can only be invoked against a governmental entity under exceptional circumstances. Castro. The court in Castro found that it was grossly unfair to allow the county to enforce an ordinance against a homeowner when the violation was caused by an addition that was made to the home over 25 years prior and by the previous owner who had been issued a permit to construct the addition. Id. It is apparent, that like Castro, Mavon's circumstances are exceptional and that it would be grossly unfair to allow the very City that issued a permit to construct a dock on his property to prevent him from obtaining any benefit from it and applying estoppel will not

unduly harm the public interest Associated Ins Co, Inc. v. Dep't of Labor & Employment Sec., 923 So 2d 1252 (Fla 1st DCA 2006).

Accordingly, for the above-stated reasons and after due consideration, it is hereby:

ORDERED AND ADJUDGED that Mavon's motion for summary judgment is **GRANTED** and conversely, the City's motion for summary judgment is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 24th day of April, 2013.



MILY RODRIGUEZ POWELL
CIRCUIT COURT JUDGE

cc James C. Brady, Esq., Attorney for Mavon, ARNSTEIN & LEHR LLP, 200 East Las Olas Blvd, Fort Lauderdale, FL 33301

Alain E. Boileau, Esq., Attorney for the City of Fort Lauderdale, 101 Northeast Third Avenue, Ste 1500, Fort Lauderdale, FL 33301



FINAL ORDER OF THE BOARD OF ADJUSTMENT REGARDING CASE B19003

This matter was presented to this Board on March 13, 2019, concerning the application of the applicant Scott S. Liberman by and through its agent Andrew J. Schein, Esq./Lochrie and Chakas, P.A., regarding real property legally described as: RIVIERA 6-17 B LOT 1, LOT 2 E1/2, LOT 4 S 25 OF W 25, BLK 4.

Whereas the Applicant appealed decision of the department in the interpretation and application of following provisions of the Unified Land Development Regulations ("ULDR"):

Section 47-19.3. - Boat slips, docks, boat davits, hoists and similar mooring structures.


Appealing the application of Sec. 47-19.3. - Boat slips docks, boat davits, hoists and similar mooring structures of the Unified Land Development Regulations to property located at 831 Solar Isle Drive, Fort Lauderdale, Fl. 33301 pursuant to Sec.47-24.12(B).

And the Board having heard and reviewed the evidence in this matter has determined that the department's application of the ULDR is clearly erroneous, it is ORDERED BY THE BOARD OF ADJUSTMENT OF THE CITY OF FORT LAUDERDALE THAT THE SAID APPLICATION BE

APPROVED by a vote of five (5) in favor and two (2) opposed

The appeal, reversing staff's determination with respect to whether a principle structure exists on the lot, consistent with the requirements of the ULDR Passed 5-2 with Mr. Nelson and Mr. Maxey opposed.

Dated this 20th day of March, 2019.


Douglas Reynolds
Chair of the Board of Adjustment

Pursuant to ULDR Sec. 47-24.12.A.8, This order shall be recorded in the public record of Broward County, Florida at the cost and expense of the applicant.

Unless a shorter time period is specified above, a building permit to implement the improvements authorized by this Order must be secured within 180 days of the date of entry of this Order.

Temporary nonconforming use permits shall expire within the time specified in the final order, which such time may not exceed one (1) year from the date of entry of the final order.

Pursuant to ULDR Sec. 47-24.12.A.11, where an application for a variance or special exception or both has been denied by the Board of Adjustment, no new application for the same or a substantially similar variance or special exception or both may be made within a period of two (2) years from the date of such denial.

In order to appeal the Board's decision, a Petition for a Writ of Certiorari must be filed (with the Circuit Court) within 30 days of rendition of this Final Order of the Board of Adjustment. Fla. Rules App. Procedure, Rule 9.100 (c).

Exhibit 'B'

ULDR § 47-35.1
Definitions

Development site: A lot or parcel of land or combination of lots or parcels of land proposed for development. If a development site has more than one (1) parcel or lot with different owners, all property owners will be required to sign the application for development permit, and shall be required to execute and record in the public records a declaration on a form provided by the department, stating that the parcels have been developed as a single unit for purposes of meeting the ULDR. The declaration shall include a legal description of each parcel and shall state that no parcel may be developed separate from the other parcel unless each parcel standing alone meets the requirements of the ULDR.