



CITY OF VENICE
Vested Rights Determination
Kevin Murphy, 425 Gulf Street, Venice FL
Staff Report

Alleged Vested Right:

In submitting for a determination of Vested Rights, the following is required by City Code:

Sec. 86-48. - Vested rights.

(a) Nothing contained in this chapter shall be construed as affecting existing vested rights. It shall be the duty and responsibility of any person alleging vested rights to affirmatively demonstrate to city council the following:

- (1) A reliance in good faith upon some act or omission of the government; and*
- (2) A substantial change in position or the incurrence of such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that have been acquired.*

In response to this “duty and responsibility” to demonstrate to City Council, Mr. Kevin Murphy (petitioner), owner of the property located at 425 Gulf Street, Venice FL, has alleged that he has vested rights for a resort dwelling at the aforementioned subject property prior to enactment of the City’s resort dwelling ordinance adopted on July 14, 2009. For the purpose of this staff report and review of the vested rights alleged, it is important to understand that a resort dwelling is defined as follows:

Definition (Sec. 86-570. - Definitions.): Resort dwelling means any one, two, three or four-family dwelling unit located in the RE or RSF zoning district which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of less than 30 days or one calendar month, whichever is less.

further;

Sec. 86-151. - Resort dwellings.

- (1) No new resort dwelling units are allowed in RE or RSF zoning districts.*

Mr. Murphy contends in his request that he purchased the property in 2008 relying on “...the fact that it was not illegal to rent a vacation house by the week in the City of Venice.” Mr. Murphy further contends that after renovation to the property, he sought and secured a Florida Annual Resales Certificate for sales tax in May, 2009 (see attached documentation) and has secured this certificate for each subsequent year from 2009 to the present. Mr. Murphy also contends that had the City of Venice Vested Rights - Kevin Murphy, 425 Gulf Street, Venice FL

had a ban in place at the time of purchase he would not have purchased the property. It is noted that the petitioner provides additional information regarding requirements/rules he uses in renting the property along with testimony from guests starting from December 2010, which indicates evidence that weekly rentals did occur at the subject.

Staff Review:

In review of the submitted petition for vested rights, the subject property located at 425 Gulf Street, Venice FL, has a current zoning: RSF-3. It is noted this zoning was also in effect on July 14, 2009.

In review of the alleged vested rights it is important to note the following highlighted section of code:

Sec. 86-48. - Vested rights. (b) Notwithstanding anything herein to the contrary, any person alleging vested rights may not rely upon an erroneous act of the city that the person asserting vested rights could have discovered with reasonable diligence and effort. Further, the city may deny a requested vested rights determination if the city shows that a peril to the health, safety, morals or general welfare of the residents or property in the city has arisen subsequent to the approval of any development order on the subject property.

Requirements for Resort Dwelling (prior to July 14, 2009):

It is also important to understand what the requirements for legally operating a resort dwelling were in place prior to July 14, 2009. These main requirements were as follows:

1. A State of Florida resort dwelling license.
2. A local business tax receipt for the City of Venice and Sarasota County.
3. A change in building occupancy classification from the Florida Building Code from single family R-3 to transient public lodging R-1 classification (weekly rentals) which may also necessitate additional building permitting requirements.

In summary review of the petitioners' alleged vested right, only one item of evidence from 1-3 listed above was provided: a paid Florida Annual Resales Certificate for sales tax that was effective May 27, 2009, including each subsequent year including 2015. While this evidence is recognized, it is noted that the petitioner has provided no evidence of paid business tax receipts from the City of Venice or Sarasota County, or an approved change of occupancy classification from the City of Venice building department as evidence to satisfying #2 and #3 above satisfying all requirements for a legally operating resort dwelling.