

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

VIRGINIA RAPKIN
JEFFREY RAPKIN
Petitioners,

CASE NO.: 2023 CA 004075 SC

v.

CITY OF NORTH PORT
Respondent.

_____ /

PETITION FOR RELIEF AND PETITION FOR WRIT OF CERTIORARI

Now comes Petitioners who file this action and states as follows:

1. On or about September 28, 2022, Hurricane Ian caused considerable damage to Petitioners' home located at 4696 Libby Road, North Port, Florida, 34287. Petitioners have resided in the home since 2001.

2. Unable to obtain alternate housing, Petitioners have continued to reside in the damaged home. Petitioners attempted to rent an apartment and paid a deposit, but could not afford the first, last, security, the monthly rent, together with maintaining the mortgage on the damaged home, supporting their disabled daughter (Autism/developmental disabilities) and other expenses. The deposit on the apartment that the Petitioners tried to rent was nonrefundable. Petitioners lost the deposit and were forced to remain in the home.

3. Petitioners' insurance policy allocates \$23,849 for "loss of use," but Petitioners' insurance company refuses to provide it. Petitioners found alternate housing, requested insurance pay, but insurance company refused to pay because it was not one of their "authorized vendors."

Inspection states that the cost to repair the home is over two hundred thousand dollars (\$200,000). Insurance company has provided only nine thousand dollars (\$9,000) to Petitioners and refuses to provide any other money.

4. There are holes in the roof and Petitioners can see the sky from inside of the home. When it rains, Petitioners use buckets, bins, trash containers, pots and pans to collect the water raining into the home. The walls are wet and the floors are mushy and damp. The home smells soggy, damp, like a laundry basket of wet clothes that has not been dried. There is mold but Petitioners use bleach to clean it, but it comes back. Petitioners have been forced to throw away many damaged belongings and much of their clothing because mold does not wash out.

5. In March, 2023, FEMA approved a Temporary Mobile Housing Unit (MHU) for Petitioners to use while their home was to be remediated. The FEMA MHU is a two-bed unit that REMAINS ON WHEELS and has a hitch. (see Exhibit "A") FEMA allows the use of their MHU's for a temporary period of time, then FEMA cleans and redistributes these units to other homeowners in need. (see Exhibit "A.")

6. The home cannot be repaired while the Petitioners are residing in it. FEMA's MHU would remedy this issue. Petitioners could stay in the mobile unit while repairing their home.

7. FEMA applied for permits for electricity poles, the city approved, and FEMA installed them on Petitioners' property. Also, on Petitioners' property, FEMA connected plumbing utilities for use with the MHU.

8. FEMA informed Petitioners that they could not place the MHU unless tree debris, brush, and foliage was removed from the site. Petitioners spent seven hundred dollars (\$700) to have the debris removed and the land cleared for FEMA to place the MHU.

9. When FEMA began to bring the MHU to Petitioners' home, the City of North Port issued a "stop" order and FEMA was not permitted to bring the MHU to Petitioners' home.

10. The City of North Port has actively and purposefully stopped FEMA from providing the MHU to the Petitioners. (See attached exhibits)

On April 13, 2023, in an email to FEMA, the City of North Port stated:

"The enforcement of removal of these units once an emergency declaration is lifted is extremely difficult, therefore, the City chose not to allow MHUs to be utilized." (See attached Exhibit "B.")

11. Petitioners' have assured and promised the City of North Port that they will use the MHU only for as long as needed to make the necessary repairs, but the city has still refused.

12. Without statutory or legal authority, North Port is refusing to allow FEMA to provide the temporary housing to the Petitioners. Further, city officials have stated that they have ordered the removal of any previously provided FEMA MHUs for other citizens who have already received them.

13. Petitioners contacted Commissioner McDowell, who requested the issue be placed on the agenda for April 25, 2023. (See Exhibit "C") At hearing, Commissioner McDowell requested the city discuss, vote, and allow FEMA to provide temporary housing for Petitioners and other citizens in need.

14. McDowell attempted valiantly to convince the other commissioners to give permit for Petitioners to receive FEMA's temporary housing. Commissioner McDowell stood up for Petitioners and tried to help them.

15. The other Commissioners, knowing full well the situation at hand, refused to allow FEMA to provide temporary housing to Petitioners.

16. On April 25, 2023, except for Commissioner McDowell, the rest of the Commissioners upheld the decision to deny the Federal Government from helping Petitioners.

RELIEF SOUGHT BY PETITIONERS AND STANDARD OF REVIEW

17. This proceeding is being brought as a request for "First-Tier Certiorari Review" of the adverse decision of the North Port City Commission on April 25, 2023.

18. In *County of Volusia v. City of Deltona*, 952 So.2d 340, 343 (Fla. 5th DCA 2000). the court defined the scope of such review as "[i]n this First-Tier Review, the court determines only: whether the lower tribunal afforded the parties procedural due process; whether the essential requirements of law were observed; and whether the lower tribunal's action was supported by competent, substantial evidence." See also, *City of Tampa v. City National Bank of Florida*, 974

So.2d 408 (Fla. 2d DCA 2007): " ... [C]learly established law" (for the purpose of evaluating essential requirements of law) can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional provisions ... "

19. The City of North Port has improperly, arbitrarily, and illegally declared that FEMA's housing unit fits the definition of a permanent "manufactured" home. However, the housing unit is on wheels. (See Exhibit "A") The wheels are never removed. MHUs have a hitch for trucks to deliver and remove them. FEMA is clear in its requirements that citizens who receive these units are not permitted to remain in them on any permanent basis. The units belong to FEMA and they are for temporary use only.

JURISDICTION

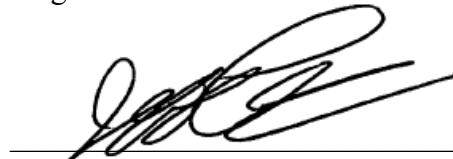
Pursuant to Florida Rule of Civil Procedure §1.630, Florida Rule of Appellate Procedure §9.100, Florida Rule of Appellate Procedure §9.190, Florida Statute §26.33, Florida Constitution Article V, §5, Petitioners request that this Honorable Court Order that the City's decision to preempt the Federal Government as well as to declare that a thing on wheels is "permanent," departs from the essential requirements of law. (See Exhibit "C")

REQUEST FOR EXPEDITED HEARING

Petitioners and their daughter have been residing in a wet, moldy environment for over six months. Petitioners are in a constant state of fear that it may rain. When it rains, it rains inside of their home. Everything is always wet. FEMA is *only* permitted to allow Petitioners the use of the unit for eighteen (18) months after an emergency is declared. The Petitioners have already lost over six months and are running out of time. Petitioners plead with this Honorable Court to

help them and their daughter and compel the City of North Port to comply with the essential requirements of law.

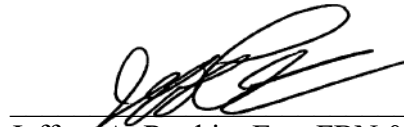
WHEREFORE, Petitioners request that this Honorable Court Order the City of North Port to issue a permit to allow FEMA to provide housing for Petitioners.



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Port Charlotte, Fl. 33954
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Fax:888-908-4147
email@rapkinlegal.com

CERTIFICATE OF SERVICE

I hereby swear and affirm that a copy of the foregoing was hand-delivered, faxed, emailed, emailed through State of Florida's Email Service System, or mailed through U.S. Mail to the opposition, to wit: Attorney for the City of North Port, Amber Slayton, northportcityattorney@northportfl.gov, and through official Service of Process, on this, the 26th day of April, 2023.



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FAQs about living in a FEMA MHU



By WAFB Staff

Published: Oct. 29, 2016 at 6:32 PM CDT |

Updated: Oct. 29, 2016 at 6:33 PM CDT



(WAFB) - [Viewing this story on a mobile device? Click here to see a slideshow of the FEMA Mobile Housing Units \(MHUs\).](#)

Information provided by FEMA

AA

google.com



Petition for
Certiorari
EXHIBIT "A"

The New and Improved "FEMA Trailer"



Petition for
Certiorari
EXHIBIT "A"

📅 01 / 04 / 2019

🏠 **Mobile Home Living**





www.wafb.com



FAQs about living in a FEMA MHU

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Petition for Certiorari EXHIBIT "B"

From: Alaina Ray
Sent: Thursday, April 13, 2023 8:57 AM
To: McMaster, Simon <simon.mcmaster@fema.dhs.gov>
Cc: Kahn, Carl <Carl.Kahn@fema.dhs.gov>; Mandigo, Matthias <matthias.mandigo@fema.dhs.gov>; Bookout, Linda <Linda.Bookout@fema.dhs.gov>; Leshore, Jackie <jackie.leshore@fema.dhs.gov>; McCauley, Tracy <Tracy.Mccauley@fema.dhs.gov>
Subject: RE: [EXTERNAL] City of North Port Unified Land Development Code Section 53-240 (Special Structures) Sub Section K

Good morning, Simon –

The City Commission did not declare a “housing emergency” under ULDC 53-240.K. following Hurricane Ian, specifically because the City preferred not to have MHUs placed on properties throughout the city.

It is important to note that while FEMA may be able to control the removal of housing units they provide, an emergency housing declaration would have also allowed privately-provided MHUs. The enforcement of removal of these units once an emergency declaration is lifted is extremely difficult, therefore, the City chose not to allow MHUs to be utilized.

Instead, the City Commission ratified the attached Emergency Order waiving the 30-day time limit for occupancy of travel trailers and recreational vehicles, which FEMA may continue utilizing to house affected persons.

Please let me know if you have any questions.

Thanks,
Alaina

Alaina Ray, AICP
Director
Neighborhood Development Services
City of North Port
O: 941-429-7098


Please note my new email address: aray@northportfl.gov



www.northportfl.gov

Petition for Certiorari EXHIBIT "C"



From: Virginia Rapkin rapkinv@yahoo.com 
Subject: Fwd: FEMA Housing Presentation
Date: April 25, 2023 at 10:29 PM
To: Jeffrey Rapkin jrapkin99@gmail.com

Sent from my iPhone

Begin forwarded message:

From: Debbie McDowell <dmcowell@northportfl.gov>
Date: April 19, 2023 at 2:24:41 PM EDT
To: RAPKINV@yahoo.com
Subject: FEMA Housing Presentation

Virginia –

Thank you for sharing your plight with me about your housing situation and issues you've encountered along the way. I wanted to let you I contacted Simon immediately. He gave me a wonderful tutorial on how the program works. After our conversation, I asked if they would be willing to give a presentation to the Commission; they agreed! I immediately created the agenda request (below). The presentation will be Tuesday, April 25 at 6pm during our commission meeting. The presentation will include the housing options, requirements, and terms for FEMA direct temporary housing. Hopefully, we'll also be able to make sure our codes are sufficient to allow these temporary housing options.

Here's the agenda and it's #5C <https://cityofnorthport.legistar.com/View.ashx?M=F&ID=11893443&GUID=7613926A-1EBE-474A-9792-2F42309C5B43>

Thanks again.

Debbie McDowell

Commissioner, City of North Port

4970 City Center Blvd.

North Port, FL 34286

Office: 941.429.7071

City Cell: 941.628.0486

Facebook: www.facebook.com/CommissionerMcDowell

From: Debbie McDowell
Sent: Monday, April 17, 2023 2:47 PM
To: Jerome Fletcher <jfletcher@northportfl.gov>
Cc: Jason Yarborough <jyarborough@northportfl.gov>; Julie Bellia <jbellia@northportfl.gov>; Anna Duffey <aduffey@northportfl.gov>
Subject: 4/25 - agenda item request - FEMA Housing Presentation

Jerome – Could you please include this on the April 25, 6pm, Commission meeting agenda? I have spoke with Simon and Linda with FEMA and they will be making a presentation to the Commission. I am waiting on one more piece of information from Simon to include with the agenda book on materials but wanted to get this to you.

Simon to include with the agenda back up materials but wanted to get this to you ASAP. If necessary, we may need to amend the agenda to include it or I can distribute it during the meeting.

Thanks
Debbie

Title: FEMA Direct Temporary Housing Presentation

Recommended Action: Discussion and possible action regarding North Port housing needs due to Hurricane Ian

Background: On September 27, 2022 Hurricane Ian made landfall as a Category 5 impacting our entire city. This impact was widespread and caused significant damage to roads, structures, homes and businesses. Housing continues to be a primary cause of impact to our residents and staff. FEMA offers direct temporary housing to our residents. This presentation will assist our residents in obtaining the right type of FEMA housing offered, the requirements and other pertinent information.

This presentation may also assist the Commission to providing direction to the City Manager and staff to ensure our codes meet the needs of our residents to obtain FEMA appropriate housing, as they rebuild.

Financial Impact: unknown

Strategic Planning: Good Governance and Safe Community

Backup materials: email thread



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attachment.eml