



MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 112-2008

LETTER TO COMMISSION

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CITY CLERK'S OFFICE

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: April 14, 2008

SUBJECT: Fisher Island Development - Palazzo del Sol and Palazzo Del Luna

Recently, several inquiries were made to the Mayor and Commission Offices regarding the potential effect, if any, to the City's overall flood insurance ratings based on the above noted projects. These inquiries were caused, in large part, by misleading information disseminated by the Service Employees International Union ("SEIU") to members of the community, particularly to Condominium and Homeowner's Associations. A copy of the SEIU publication is included.

The SEIU publication states that homeowners and condominiums are in danger of having their federal flood insurance entirely revoked or severely diminished due to the City's issuance of a building permit for these two projects. The SEIU publication bases this allegation upon a separate situation that occurred in a city located in Oregon where that city allegedly permitted a number of single family residences to be constructed below the required base flood elevation. For reference, a Federal Emergency Management Agency ("FEMA") bulletin and a newspaper article that detail the circumstances in Oregon are attached. It should be noted that the circumstances in Oregon are distinctly different from the two Fisher Island projects, in that, the Oregon properties have livable or habitable spaces below the base flood elevation.

Background

Palazzo del Sol and Palazzo del Luna are two projects which have been permitted for construction on the Miami Beach portion of Fisher Island. Palazzo del Sol received a Building Permit in October 2007; its Foundation Permit was approved on March 15, 2007. Palazzo del Luna received its Building Permit in December 2007. The Projects, as proposed and permitted, have all residential units above the base flood elevation. The parking garages, which constitute non-habitable, and non-livable, space, are below the base flood elevation. Additionally, both projects have a gym/spa space above base flood elevation on the first floor.

There are two applicable regulatory authorities that have jurisdiction regarding construction and base flood elevation. These are the Florida Building Code and the Flood Plain Management Requirements. Each code or regulation, and how it applies, is discussed separately below.

Florida Building Code

The Projects have been classified as a mixed occupancy by the Building Official. Under the Florida Building Code, buildings that have more than one occupancy classification are

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considered to be mixed occupancy; that is, more than one use in each building. For both Projects, the classifications are R-2 for multi-residential and A-3 for the gym/spa space, which classifies the buildings as mixed occupancy.

Flood Plain Management Requirements

Based upon the premise that the Projects are a mixed occupancy in Zone AE, FEMA's Technical Bulletin 6-93 states that professionally designed buildings that have residential and non-residential uses (i.e., mixed occupancy), may be designed with parking garages that are located below the base flood elevation with certain design provisions such as structurally flood proofing the parking garage areas that are below base flood elevation. In fact, FEMA considers any building with a non-residential area above the base flood elevation as a "mixed use" even in cases where the Building Official does not classify it as two different occupancies. FEMA's interpretation is broader than that of the Florida Building Code. The Technical Bulletin is the guiding authority on the issue, as the Code of Federal Regulations is silent as to the ability or inability to construct a garage below base flood elevation with a mixed use building.

Therefore, the decision of the Building Official to permit the Projects as constructed with sub-grade parking garages is correct and permissible under FEMA regulations.

I hope this fully addresses the inquiries that you have received on this issue. If you have any additional questions or concerns, please let me know.

Attachments

C: Jose Smith, City Attorney
Rhonda Montoya Hasan, First Assistant City Attorney
Thomas Velazquez, Building Director
Jorge Gomez, Planning Director

February 14, 2008

Dear Condo Association Leader:

I am writing to alert you to a problem that Miami Beach residents might soon face.

Each year, dozens of cities and counties across the nation receive letters from the Federal Emergency Management Agency notifying them that their participation in the National Flood Insurance Program has been put on probation and that they risk permanent suspension from the Program. The reason? They have failed to adopt or enforce the Floodplain Management Regulations which FEMA makes a prerequisite for participation in the Program.

Most communities take immediate action to fix the problem, because being suspended from the Program, in the words of one Florida floodplain manager, is "a really big deal." As of the date of suspension, flood insurance is no longer available in the suspended community, and federal disaster assistance will no longer be provided in the case of a flood-related emergency. In flood-prone areas, suspension from the Program spells tragedy.

Corrective action isn't always easy, though, as the case of the City of Shady Cove, Oregon, vividly illustrates.¹ FEMA inspections in Shady Cove revealed that the City had failed to enforce its Floodplain Management Regulations by allowing seventeen single-family homes to include prohibited basements or living spaces below the area's Base Flood Elevation. Last November, Shady Cove was placed on probation, adding \$50 to the flood insurance premiums of all policyholders in the City. Desperate to forestall suspension from the Program, City leaders have directed the seventeen property owners to bring their properties into compliance before the City's impending suspension in May. But, according to a contractor hired by the City to fix the problem, there are "a very few [property owners] who said they just aren't going to comply." The fate of flood insurance in Shady Cove is still up in the air, because insurance for everyone in the City depends on the City's enforcement actions toward a few intransigent property owners.

A similar situation is unfolding right here in Miami Beach.

The proposed development of two Fisher Island condominium buildings, which may violate Floodplain Management Regulations, could threaten the availability of flood insurance and federal disaster relief for all property owners in Miami Beach. Just as the City of Shady Cove did, the City of Miami Beach has approved prohibited basements below the local Base Flood Elevation for the condominium buildings "Palazzo del Sol" and "Palazzo della Luna." If these plans go forward and FEMA finds that the City is failing to enforce the Regulations, Miami Beach could face a crisis like Shady Cove's. Moreover, even if FEMA does not suspend participation in the National Flood Insurance Program, the City's rating in FEMA's Community Rating System could be jeopardized by its failure to enforce the Regulations. If the City's rating goes down, the 15% discount currently enjoyed on flood insurance premiums by all policyholders in the City would be eliminated.

¹ "Shady Cove flood insurance might run dry in early May." Brad Miller. January 19, 2008. *The Mail-Tribune*. Southern Oregon Media Group: Medford, OR.

A public safety officer on Fisher Island, whose health and safety will be directly affected by the prohibited basements, has appealed the building permits for Palazzo del Sol and Palazzo della Luna. The appeals challenge whether Fisher Island should be allowed to build the basements in violation of the FEMA regulations and ask the City to enforce the Floodplain Management Regulations if it allows the prohibited basements.

These appeals, filed with the assistance of the Service Employees International Union Local 11, will be heard by the City's Floodplain Management Board at 9:00 a.m. on March 7, 2008 at City Hall. The City's Building staff has so far defended the decision to issue the permits.

If you or the members of your association are concerned about the potential rate increases or loss of flood insurance which could result from the City's irresponsible actions, please call Building Director Thomas Velazquez at (305) 673-7610 or City Manager Jorge Gonzalez at 305-673-7010. **Tell Mr. Velazquez and Mr. Gonzalez to stop granting special favors to Fisher Island that could put the entire City at risk.**

Thank you for taking the time to consider this extremely important matter. Please feel free to contact me at 305-672-5964 with any questions or comments.

Sincerely,

Hiram Ruiz
Deputy Director
SEIU, Local 11

Shady Cove flood insurance might run dry in early May

By Bill Miller
for the Mail Tribune
January 19, 2008 6:00 AM

SHADY COVE — The city may find itself suspended from the National Flood Insurance Program (NFIP) much sooner than expected. That was the biggest surprise coming out of Thursday's public meeting to discuss violations of national floodplain regulations.

"Potentially, a suspension could be issued anytime after May 2," said Joe Strahl, president of Public Works Management (PWM), a private company hired to help the city bring 17 violating properties into compliance.

City officials had been under the impression that suspension was not a possibility before November, at which time they expected the Federal Emergency Management Agency to conduct a re-inspection of the problem properties that were discovered during FEMA's 2001 inspections.

"FEMA said they would come back to re-inspect in May, six months after our probation began," said City Administrator Elise Smurzynski. "In our most recent communication with FEMA they've now indicated they will also be considering suspension at that time."

Strahl said his impression is that FEMA really doesn't want to impose a suspension.

"Theoretically, they could," he said, "but what they really want is the city to enforce their floodplain ordinance. The city has opportunities here to show what it's doing.

"Our goal is to demonstrate that the city has achieved substantial compliance and is well on the way to full compliance."

Shady Cove was placed on NFIP probation Nov. 2. Probation adds a yearly \$50 surcharge to flood insurance premiums. Suspension from the NFIP would mean flood insurance would not be available to residents, which could cause major problems for mortgage holders.

"Also, the city would not be eligible for disaster assistance in case of floods," said Strahl. "There would be no federal mortgage insurance and of course a potential drop in property values."

The most serious floodplain violations involve improvements homeowners have made below the base flood elevation, which includes basements converted into living spaces. Under FEMA guidelines, those improvements could break away during a flood and become a hazard to homes downstream, causing still more damage.

Councilman Gary Hughes asked if there had been any response to the letters sent to 17 property owners who were told to bring their properties into compliance by Feb. 29.

"Several people have called and indicated their willingness to comply and in general the contacts have been positive," said Strahl. "Some have said it's just too short of a time frame. We've also heard from a very few who said they just aren't going to comply.

"My sense is that about half of the 17 are getting there."

He said he wants the property owners to keep in touch by letting PWM know what steps have already been taken, what steps are planned and when those future steps will be taken.

"Feb. 29 should not be considered a final date when you will be fined," said Strahl, "but we do need to know where you're going and when, so we can develop our reports and plans for the city."

Hughes asked what would happen if an owner refused to comply.

"Our goal is to get them to comply anyway," said Strahl, "not by throwing a tantrum, but by trying to work with them to get the answers to issues that they feel are unreasonable."

When the opportunity to ask questions was given to the audience, a resident asked what could be done about owners who continue to refuse.

"Is the city prepared to take those houses out of the program so the rest of us are not hurt by it?"

Strahl explained that the city could ask for a "1316 process," which, if FEMA approved, would remove the property from the violations list and bar the property from any federal insurance or flood assistance.

"The danger in regarding that as a quick and easy fix," said Strahl, "is that it's not designed to be a long-term fix and it's not easy to get.

"The city has the responsibility for enforcing its ordinances," he said. "Just because someone is willing to live with a situation on their property without insurance, does not mean that the city has lived up to its obligation to potential future owners of the property or to other citizens who may be impacted if something does happen."

Judy Burgess asked if the city could publish the names or addresses of the people causing the problem.

"We certainly can," said Smurzynski. "Being a small community, the council felt they didn't want to put anybody's property at risk, but FEMA has already released all of that information, so, it is certainly available from the city if someone wishes to submit a public records request."

Bud Rees suggested the city create a line item in the next budget where expenses related to bringing properties into compliance would be itemized.

The meeting adjourned with promises from Mayor Ruth Keith and the council that more FEMA update meetings will be scheduled.

Bill Miller is a freelance writer living in Shady Cove. Reach him at newsmiller@yahoo.com



FEMA Notifies Shady Cove of Impending NFIP Probation

Release Date: August 31, 2007
Release Number: R10-07-051

» 2007 Region X News Releases

SALEM, Ore. -- The U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) has notified the City of Shady Cove of impending probation from the National Flood Insurance Program (NFIP), effective November 1, 2007. According to FEMA officials, the probationary action is the result of deficiencies in the city's floodplain management program.

The NFIP is a federal program that makes federally-backed flood insurance available to residents of communities that adopt and enforce regulations to reduce future flood damage. Over 20,000 communities participate in the NFIP nation-wide, with 5.8 million policies in effect.

A June 22, 2007 letter dispatched from FEMA's regional office in Bothell, Washington notified the city that it will be placed on probationary status with the NFIP. The critical deficiencies include livable areas below 100-year base flood elevation and lack of hydrostatic venting in the residential foundations. These deficiencies are considered life and safety issues.

FEMA officials said that the probation action is a notice to city officials that their floodplain management program does not meet the minimum NFIP criteria, and that the deficiencies are serious enough to lead to eventual suspension from the program. They emphasized that in suspended communities where flood insurance is no longer available, federal agencies are prohibited from making grants, loans or guaranties of properties in the flood hazard area. Furthermore, if a flood disaster is declared, certain types of federal disaster assistance will not be available.

FEMA officials said that the probation will become effective in Shady Cove unless city officials take the necessary steps to correct the program deficiencies, remedy the violations to the maximum extent possible, and demonstrate effective implementation of the local ordinance in support of the NFIP requirements.

The probation will not affect the availability of flood insurance to Shady Cove residents. However, a \$50 surcharge will be added to the premium for each new or renewed flood insurance policy sold in the community for at least one year, beginning November 1, 2007. This surcharge will remain in effect if the probation period is extended.

The City of Shady Cove currently has 89 flood insurance policies in force, with approximately \$21.8 million in coverage, which would be affected by the probation. FEMA Region X officials have offered to provide technical assistance to help the city remedy all possible violations and achieve

compliance with minimum NFIP criteria.

FEMA coordinates the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror.