

FDN 25-156 review hearing-20251205_091121-Meeting Recording

December 5, 2025, 2:11PM

1h 9m 42s

● **Camaria Pettis-Mackle** started transcription

CP **Camaria Pettis-Mackle** 0:06
Yes, Sir.

H **HEARING OFFICER, DEREK SCHROTH** 0:07
All right.
Good morning, everyone.
It's December 5th.
We're here on case FDN 25156 concerning 4312 W Laurel Street.
May we have appearances, please. First for the city.

CP **Camaria Pettis-Mackle** 0:21
Maria Pettis Macle from the legal department.
Sarah Cotton, zoning administrator.
Laura Marley, zoning coordinator.

H **HEARING OFFICER, DEREK SCHROTH** 0:33
And on the petitioner side.

CP **Camaria Pettis-Mackle** 0:35
Mark Bentley, Council for the petitioner.
Ryan Manasi, director of planning for Johnson Pope.

H **HEARING OFFICER, DEREK SCHROTH** 0:46
And are there any witnesses who plan to testify today?

CP **Camaria Pettis-Mackle** 0:50
Yes, Sir.

H HEARING OFFICER, DEREK SCHROTH 0:52
If those who intend to testify, if he could please raise your right hand and we're going to swear you in.
Do you swear affirm to tell the whole truth and nothing but the truth?

CP Camaria Pettis-Mackle 1:03
Yes, Sir.

H HEARING OFFICER, DEREK SCHROTH 1:06
Alright, we'll go ahead and start with just a preliminary matter, Mr. Bentley. You'll have ample opportunity to present any argument and evidence. What was your concern about the procedure set forth by the city?

CP Camaria Pettis-Mackle 1:17
Yeah, it was the Mr. Straw.

H HEARING OFFICER, DEREK SCHROTH 1:18
For this hearing.

CP Camaria Pettis-Mackle 1:21
It was the abbreviated time frames.
So that was my primary concern.

H HEARING OFFICER, DEREK SCHROTH 1:27
Understood. Yeah, you'll have ample time to present any evidence and argument that you desired today.
So we'll go ahead and start with the staff presentation then.

CP Camaria Pettis-Mackle 1:39
Back in Mr. Strauss, share my screen.

H HEARING OFFICER, DEREK SCHROTH 1:43
Yes.

CP Camaria Pettis-Mackle 2:12

This is my question.

Do you see my screen?

H HEARING OFFICER, DEREK SCHROTH 2:17

Yes.

CP Camaria Pettis-Mackle 2:18

Yes.

Good morning, Eric Cotton leading administrator again for the city of Tampa.

This is a petition for a view for FDN 156 twenty 25156 for the property at 4312 W. Laurel street.

The petitioner is Taylor Ragna rug. You got it.

The authorized agents again are Mark Bentley as and Ryan Manasse from Johnson Pope.

The property zoned residential single family.

Only RS50 in the original formal decision request was to confirm the nonconforming status as from the application quote.

Property was property was built as a duplex in 1962 and has been occupied with two separate units ever since.

I have a property tax card from when it was built.

So on the next screen is just an aerial map of the location and side which is highlighted in red.

The to the West, on the other hand, is a school, and it's mostly just a residential development.

And there's some PDS for nonresidential or for or for multi family residential to the north along Spruce.

The previous zoning on the property.

Was R1, which was in effect from 1956 until 1987 when zoning conformance took place.

So when this property was.

Allegedly built in 1962 as a duplex.

It would have been.

The zoning would have been only for single family residential uses.

This skip to the next slide please.

This is a map of existing uses and you can see.

The zoning is primarily residential, single family once again.

The highlighted property in pink is the applicants or the petitioners property and you can see there's only one other property in the area that's in the within the 13120 feet. That's not.

That's not a single family use.

That's for residential single family use, which is the pink side on the South side of Nassau, is right now. It's just just within the 13120 feet.

Again, the property was built in 1962, so six years after the implementation of the city's first zoning regulations.

The property that's on the South side of Nassau was built in 1945, which is 11 years prior to the implementation of the original R1 zoning on the properties.

This map we received from the property Appraiser's office.

It's a little little hard to read, but it does show the folio numbers of the properties and the year they were built so you can see this one on highlighted in red was built in 1962.

There's other homes built in the exact same time frame in 1963 1964 1957 and all those properties were built as single family homes in conformance with the requirement of of the R1.

Zoning designation.

And this is just a summary of the nonconformities.

This is just straight from the code, so 27291 states that to be a nonconforming use it had to be conforming under the former zoning code, which was chapter 43 when the property was zoned R1.

The as a two family dwelling unit. The structure of the property was never conforming to the zoning either. In 1956 through 87 or current RS50 designation. No evidence was submitted or reviewed by the city.

They showed this property was legally permitted as a 2 unit or a duplex property in 1962, at the time of permitting, the only use that would have been allowed there would have been a single family home.

And go to the next.

And that's the next.

The next slide is, is this the question says.

Do you have any questions, Sir?

H HEARING OFFICER, DEREK SCHROTH 6:28

I do not.

CP Camaria Pettis-Mackle 6:29

OK.

Thank you.

H HEARING OFFICER, DEREK SCHROTH 6:32

Attorney Pentas faculty have any questions that Mister Cotton?

CP Camaria Pettis-Mackle 6:35

Yes, Sir.

May I proceed?

H HEARING OFFICER, DEREK SCHROTH 6:38

Yes.

CP Camaria Pettis-Mackle 6:39

Mr. Cotton, as you testified to this property when it was built in 1962, had a zoning classification of R1, correct? Yes, ma'am.

And for the R1 zoning classification, a single family use was the only permissible use for residential development, yes.

Now you reference City of Tampa Code, section 27-2292.

I'm sorry, 291 in regards.

Starting to in regards to non conformities.

You testified that in order for it to be a non conforming use, there has to be legally permitted.

Can you explain to Mr. Schroth what that what that means?

To illegally permitted it would have had to go through the permitting process.

So in 1962, everything was paper. We didn't have any of the technology we do now, but they would have submitted a building plan that would have shown a single family home and that's what would have been reviewed by the building department.

Back in the 60s.

If the property owner at the time this was built in 1962.

It's your position that if it was built as a duplex, you would have the property owner at the time would have received a permit for it to be a duplex. Yes ma'am.

And.

You based your conclusion or your decision in this matter or because you did not receive.

Anything from the applicant and now the petitioner identifying a permit was issued for a duplex for this property. That's correct.

Now does the code in your analysis of this in order for you to make your decision.

Does the code allow you to also do your own research regarding this matter?

Yes, it does. And upon your own research, were you able to?

Discover any records or show anything that there was a permit a building permit issued for this property to be a duplex in 1962.

No, ma'am, it wasn't.

It was no evidence.

And so based upon the lack of the applicant, now petitioner in your review, but based upon the lack of evidence or documentation of a building permit.

Is that one of the reasons why you denied the request for nonconformity?

Yes, there was. No, there was nothing showing that when it was built, it was told as a duplex that was.

Enough evidence to me to make that determination was built legally that way.

Also.

On the slide that shows.

Let me get.

On slide four, that's titled map of existing uses.

Did you also?

In your comparison of the surrounding areas.

What? What? In your analysis of the surrounding areas, how did how did that also contribute to your decision? When I was looking at the surrounding land uses?

It's the only duplex in the area.

Had there been other duplexes that had been constructed in that same time frame?

There's a greater possibility that would have been permitted permanent as a duplex, but again, when the zoning was first instituted in 1956, the R1 designation would not have allowed duplexes and other properties that have been built that were built in that same time frame were.

All built as single family.

I have no further questions at the witness.

H HEARING OFFICER, DEREK SCHROTH 10:48

Thank you, Mr. Bentley, do you have any questions of Mr. Cotton?

CP Camaria Pettis-Mackle 10:52

Yes, Sir, I do. Before I get started though.

Is Pattis mackel the the new information exhibits that you're referencing.

We're gonna get a copy of those.

Did you bring a copy?

I already emailed them to you. OK, mine did the PowerPoint.

All the exhibits that was emailed to you earlier this week, along with Mr. Schroff receiving a copy of it.

OK.

Mr. Schroff, what I'd like to do is I'm gonna.

I just have a couple questions for Mr. Cotton that I kinda wanna lay layout our case and then walk you through some documents.

Unfortunately, you not being here, it's a little difficult, but.

Please bear with us, this is.

H HEARING OFFICER, DEREK SCHROTH 11:37

Karen, I have paper copies of all the exhibits that were submitted by both sides.

But before you begin your presentation, I would I have a question for attorney Pattis Mceldo.

You have any other witnesses other than Mr. Cotton?

CP Camaria Pettis-Mackle 11:48

No, Sir.

H HEARING OFFICER, DEREK SCHROTH 11:50

OK.

All right.

Thank you, Mr. Bentley. You can proceed.

CP Camaria Pettis-Mackle 11:53

OK.

Well, obviously this is a de Novo hearing, so I already noticed that the city's presented some information that wasn't in their response to the request for the FDN. So we have some new information too, which is authorized under the code.

Mr. Cotton, did you author the FDA letter?

It was drafted by another individual who was who was the other individual.

Is Laura Marley?

K.

So to what extent were you involved?

As Marley and I review formal decisions for non informed use together, she drafts up the letter I I review it and finalize it and sign it.

The city has purged most of its permitting records that existed prior to 56.

Is that a correct statement?

I can't answer.

I don't know the I don't the answer to that question.

How long you've been zoning manager or coordinator of approximately 5 years?

So over the course of five years, you're not prepared to answer that. I can't speak to what the city did prior to 56.

I don't have an answer for that question.

OK. Like during the course of your day-to-day routines, do you see ruck?

Is it common to see records part of 1956?

No, it's not.

The CATA system is the city's most reliable permit archive database.

Would you agree with that?

Prior to a sell. Yes. OK. I would agree with that.

So site us still exist today, correct?

No. So I just went offline in 2015. Ish, but.

Yeah, but the the actual database you make reference to it, correct?

The database database, yes.

Yeah, and apparently Miss Marley made reference to it in the FDN, actually, situs record for the subject property. Yes, Sir.

Have you ever rendered a formal decision where you didn't have a permit from the city evidencing legal construction prior to the date in question?

Yes, I'll say yes.

So it was just was that just based on circumstantial evidence?

It was based on the same evidence that was reviewed in this one. The bulk directories, properties information the same, same data that was used in this one.

So what if the property record card from the property appraiser?

Said 1956.

Would that have affected your decision?

If it was existing as of 1956 as a duplex, does that your question?

Just that one piece of evidence.

Yes, that would have.

That would have weighed more heavily than one for my 262.

And I just have a a question or two, Mr. Schroth for Miss Marley.

H HEARING OFFICER, DEREK SCHROTH 14:56

If is there any redirect by the city for Mr. Cotton.

CP Camaria Pettis-Mackle 14:56

Is there?

I do.

H HEARING OFFICER, DEREK SCHROTH 15:03

OK. We'll we'll do that.

CP Camaria Pettis-Mackle 15:03

May I proceed?

H HEARING OFFICER, DEREK SCHROTH 15:04

And then you can call Miss Marley as your witness. In your case, Mr. Bentley.

All right.

Please proceed, attorney Pettis Meckel.

CP Camaria Pettis-Mackle 15:12

Mr. cotton.

The situs program.

Is it when it was well, are you aware of or do you know if the situs program was just a

database or was it just for permits?

It was a combination of it when it went online in the mid 80s. It was a combination of new permits would be put into that system.

Old comments that were previously saved on index cards and such were then entered into the into the system under comments.

And there's just other there's other information for different databases from other public agencies were pulled into the into this. I think when it went online.

So is it fair to say that the site US program is like?

A record keeping program.

Yes, it's a large database of records.

Now you were asked on cross examination if you received a property records card from 1956 compared to a property.

Appraiser record card from 1963 or 64 that the 1956 record would have weighed more heavily.

Can you explain that to Mr. Schrock? Why it would have weighed more heavily. Yes, ma'am.

So in 1956, how does structure been existing as a duplex in 1956, when the zoning regulations went into effect?

That would weigh more heavily. That would have shown that it was built prior, prior or at the same time as implementation of zoning.

In this case, it was the property record card was 1962 which was after building records for after zoning was implemented by the city.

So the key to that this property was built after the zoning regulation. The significance of it is that the zoning at the time that this structure was built only allowed for single family, correct? Yes, ma'am.

OK, I have no further questions, Mr. Schroff.

H HEARING OFFICER, DEREK SCHROTH 17:39

All right.

Thank you, Mr. Bentley. If you would like to begin your presentation or call your witnesses, we're ready for that.

CP Camaria Pettis-Mackle 17:45

Yeah, I'll call M's Marley right now.

I didn't swear in.

H HEARING OFFICER, DEREK SCHROTH 17:51

OK, I will swear her in.

Miss Marley, do you swear?

Affirm to tell the truth and the nothing but the truth.

CP Camaria Pettis-Mackle 17:58

Yes.

H HEARING OFFICER, DEREK SCHROTH 18:00

Thank you.

CP Camaria Pettis-Mackle 18:01

Miss Marley, who's your boss?

Who's your problem, Mr. Cotton?

I'm his direct testimony indicated that you were the primary author of the FDN.

Is that accurate?

Correct. To what extent from your perspective, was Mr. Cotton involved in the analysis?

Quite a lot.

We we met on this case probably.

Five or six times he requested the map from the property appraiser.

We went over all of the.

The existing uses in the area we looked up when the other duplex was in the record, we went over really everything together.

In the FDM, and I'm paraphrasing because I don't have it in front of me, but.

What are your conclusions?

I think it's in paragraph 3.

Was that the FCN was being denied because of insufficient evidence?

Is that fair to say?

Correct what?

How do you define insufficient evidence?

Typically we look for.

Something that is directly tied to it being permitted to do a permitted a duplex or a record that it was established as a duplex.

Anything that we can base?

An approval or denial? An evidence based.

He's a document.

So in in preparing your analysis, you've got a lot of discretion in terms of the weight you put on any particular piece of evidence. Is that correct?

I review them.

All as one.

If there's more evidence, it's always better.

But I I take a look at everything that the record had or the applicant submit.

Have you ever recommended approval of an FDN when you didn't have a specific piece of evidence?

That structure existed prior to the effective date of the the code in question.

Are you talking about 1956? No, I'm just just.

I can answer that.

I honestly can't answer that.

What I'm quite what I'm asking is just based on circumstantial evidence, you might have 30 pieces of evidence, but one of them doesn't specifically indicate that the structure was built prior to a change in the code.

Have you ever approved an FDM?

Like I said, I can't answer that.

I go in and I try to find any evidence that I can to.

To you know, support the. So your answer is you just don't recall.

Yeah, I I mean, I do so many of these. I can honestly tell you.

Tell you based on what cases.

What?

Evidence they did or didn't have.

I can't honestly answer that.

Find what I'm trying to find here is the documents for Dirk.

Wilson tease on there I could.

You tell me what you wanna show, but I don't have.

I'll have.

To explain that.

Hey Derek, I sure is it.

H HEARING OFFICER, DEREK SCHROTH 21:20
Yes.

CP Camaria Pettis-Mackle 21:21
I share my screen at this point.
What I intend to do is kinda layout a road map. I wanted to go over a couple key documents.
That aren't in the record.
OK.
And.

H HEARING OFFICER, DEREK SCHROTH 21:39
Understood.

CP Camaria Pettis-Mackle 21:41
What I've done here is what do you want first?
You wanna sign this?
Well, let's make sure that the city has our I give them the OK and they have the map.
So I just put the record.
Anything that I reference is in the possession of the city.
OK.
So what I was going to do right now is.
In our hearing exhibits, you're going to have all these documents, but I just pulled out a couple of the key ones I wanted to, you know, just pay a little more attention to those. And then at your leisure, you can read this stuff.
And.

H HEARING OFFICER, DEREK SCHROTH 22:17
Are these are these identified in any way by letter or number?

CP Camaria Pettis-Mackle 22:22
Well, we we can as we proceed.
I think some of them are numbered in our packet.
They are Derek.

We've got six exhibits.

OK. And so and I apologize. So, Mr. Schwab, they're labeled petitioners hearing exhibits one through 6 and it's.

It's a little.

I don't know how they're gonna modify it, but I've already presented the record. And from the e-mail that I said it's you'll you'll see petitioner exhibit ABCDE.

So I just.

I don't.

Are you gonna say it as 123456?

Yeah, we'll we'll that way.

And here again being de Novo, there really is no complete record until the conclusion of this hearing, obviously.

So.

First of all.

The sole issue.

In this case, is articulating paragraph three of the September 12th, 2025 formal decision.

And so the issue is, is there sufficient evidence that the duplex currently located on the site was constructed legally?

So clearly you heard testimony from Miss Marley.

This is a matter of discretion.

And also when you think about it, Mr. Schwarz, we're talking about.

Having permits.

From roughly 70 years ago. OK.

No one keeps documents.

That long I've been doing this for a pretty long time and and I've had cases with the city where you never have that smoking gun or that one piece of evidence, you know, that makes things crystal clear.

But generally, the city would evaluate circumstantial evidence and then arrive at its conclusion.

And and and sometimes actually in a positive manner. Notwithstanding, you didn't have, for example, in this case, that permit prior to 1956.

So the evidence will show that the use was legally constructed.

The primary critical piece of evidence is actually referenced in the FDN, and we'll be discussed and analyzed.

So these cases where events like I said go back 70 years are difficult and really imposes an almost insurmountable burden on the property owner.

Like I said, who keeps records for 70 years and #2 the best sources.

Of evidence OK to receive a positive recommendation or decision from the city would have been a city permit. Unfortunately, and you'll hear Mr. Manasse testify is that the city has purged most of its older records.

OK.

So it's impossible to track down that permit.

So the first piece that I just referenced of evidence is the citus.

For this property and Ryan's going to talk about that during the course of his presentation.

And so that's exhibit 1.

And one thing.

Mr. Schwarz, what we have here is.

It's exhibit 4.

It's a copy of the 1951 city of Tampa zoning map.

Which identifies the zoning for the subject property is R2. I was going to show them the 51 first because yeah, sorry we thought you were going to be here.

So we had paper copy, so I'll zoom in to try to keep up with Mark. So 1951, yeah.

So anyhow, we're gonna give you the map and we've identified the property and the zoning.

This is the 51 map, OK and to our knowledge this maps was in existence prior to the enactment of Chapter 43.

In 1950.

January 1956.

So it's R2.

So a plausible explanation is to the events that transpired here.

Again, you know this is somewhat speculative, but I can imagine that this being the official zoning map of the city, when the client went in to get or the then property owner went in to get their permit. OK, the city might have just referenced the R2Z. Designation at this story issued the permit and then the construction.

I'd also like to point out is that I think the city and their FDN references like 20, was it mine 2626?

Makes reference. Yeah, there's 26 points raised in their letter.

And thirteen of those points relate to what's called a Pope directory.

In the Pope directory in the city of Tampa, he was kind of an advertising tool, akin to the Yellow Pages.

Our white pages.

So here again, about 50% of the analysis related to the poll directory, and actually a lot of it is in is favorable to our client because it demonstrates that there was never any clear intent to abandon the use of the property.

And we can go through those dates later on. But.

In under Florida law, even even if a code says a zoning code says that if you don't utilize a property, say for example.

Like typically they'll put like 90 days or 180 consecutive days.

Then you.

Divest yourself.

Nonconform you status.

However, in this case with the folk directors for the city.

Identified in its letter clearly shows there was no intent to abandon.

So I just want to get that issue off the table.

But one thing that's interesting about the folk directory, and here again the city, 50% of their documents.

Our preference to the Pope directory is and this is just an example.

We picked 1962.

And this is in our exhibits, right, Ryan?

He's not going to see them.

He won't see.

It's in the packet, but what we've done here is we've got this page 1962 Poll directory.

And then we compare that to the property appraisers record cards.

And this entire block where the subject property is located is not in the Pope directory.

OK.

So I'm just pointing that out to you.

Is that structures exist?

Pardon me, what the structures existed?

Yeah, the structures existed.

And so this other exhibit we have.

The property appraiser.

Kind of like what Eric did with his exhibit is we went through and identified the dates of construction of all the houses on the block.

And you've got like, it goes from 1940 to 1962, but here again, none of them showed up in the poll directory.

So the Pope directory is interesting, but it's not totally reliable, obviously.

So to not see the subject property in the poll directory prior to 1956 is not a great mystery.

OK.

None of these houses were on this block in the pole directory, even though they'd been there for 20 something years at that point in time.

And then what? I'm providing you with and you're pretty familiar with these these cases is?

The case lock kind of controlling certain aspects of this proceeding, for example.

These are all appellate decisions, OK?

Two more from our jurisdiction. The second DCA actually.

And these cases, and I won't identify each one, you can just take a look at them. I I think you know, you know them pretty well anyhow.

So.

They stand for the proposition that the permit is valid based on equitable stoppage, prohibits city from enforcing more restrictive zoning when a property owner relying in good faith upon some act or omission of the government has made a substantial change in position or incurred such extensive obligations and.

Expenses that it would be highly inequitable to apply that code.

To be unjust, to destroy the rights that the person has acquired.

Which in our case would be the city's attempt to revoke a lawfully permanent structure which has been maintained as such for roughly 70 years.

And consequently, as a result of its existence, and no one had a problem with this property. Obviously it's demonstrated that it's compatible with the surrounding area 'cause it's been out there for roughly 70 years.

So this these property owners have been paying higher taxes based on the fact that the Dor classification by the property appraiser is a duplex.

And I'll point out to you that the Largo case where it says stripped of illegal jargon which lawyers and judges have obfuscated it with the theory of establishing more than application of the rules of Fair play and a citizen's entitled to rely on the assurances and commit.

Of the zoning authority, OK.

And if he does, zoning authority is found by its representation.

These cases also stand for the proposition that zoning regulations are in derogation of the common law and are subject to strict construction in favor of the rights of a property owner to the unrestricted use of their property.

So kind of like Ty goes to the runner here if there's any ambiguity or question about what one of these code sections means, or how it should be applied, it should be analyzed OK in favor of the property owner.

And finally, there's a presumption of legality.

You're not giving you just a one page or out of Black's logic.

Dictionaries is a very general presumption that people have is that people have acted lawfully unless and until contrary is proved, which would be the city's burden in this case. To prove there was illegal construction or falsifying permit applications.

So once again, the sole allegation made by the city is that it is not lawful construction because of insufficient.

Evidence.

Would not be problematic had the city not purged its records.

So our guys never had an opportunity even establish.

That it was illegal use of the property or that.

It been out there prior to 1956.

With that being said.

Launch into or unless you have any questions.

Our presentation.

H HEARING OFFICER, DEREK SCHROTH 34:31

I do have one question.

What has the what has the use of the property been continuously for the last 70 years as a duplex?

CP Camaria Pettis-Mackle 34:38

Yes, it has.

We'll show you some photos.

You know the the recent photos but and also when you compare the photos with the property record cars that show the dimensions of the house and the footprint you'll

see that's always been a a duplex, OK.

And like I.

H HEARING OFFICER, DEREK SCHROTH 34:56

The duplex.

The duplex, occupied by two separate family units.

CP Camaria Pettis-Mackle 35:01

Yes, Sir.

H HEARING OFFICER, DEREK SCHROTH 35:04

All right.

Thank you.

Please proceed with your permission.

CP Camaria Pettis-Mackle 35:06

And then like and like I said, some of the references to the Pope directory made by the city and its FDN actually indicate that it was being used as a duplex over like I think.

Two decades worth of information they have there so.

So.

Why don't we go to Slide 2, Ryan?

Mr. Straoth, one thing I wanted to point out to you is when I was getting prepared.

It came to my attention that in the city's land use element of its comprehensive plan, they actually take.

The general holding from the estoppel vested rights cases and that's in the land use element and it's in our PowerPoint as slide.

Too. And I'm not gonna waste your time reading it. But basically it says equitable estoppel would apply.

If there's valid, unexpired active and agency good faith reliance, etc, etc, etc.

So that's the articulated policy that the city of Tampa, through its City Council OK to recognize equitable estoppel in connection with land use decisions.

And if you want, we can actually go and get a copy of the land use.

Element, but I would just incorporate that by reference in my testimony today is that's the exact verbiage from the land use element under vested rights.

Slide 3, Ryan.

The code does not require proof that a US existed prior to 56.

That's not in the code.

Instead, the applicant must show that the use was legal when established and later rendered non conforming by zoning amendment. Section 27297 expressly requires the city to consider a broad range of evidence, including post 1956 public records, property card surveys, and folk dire.

When original records are unavailable.

So with respect to these different forms of proof, we provided everything that we could get a lot of the stuff's impossible. Tampa Electric won't cough up utility records.

And things like that.

The property records property appraisers, field notes. They're somewhat incomplete. There's based on my practicing here with Hillsborough County property appraiser for several years.

There'll be large gaps in the.

The field notes.

The slide 4.

The denial letter findings section concludes that unless the duplex existed prior to 56, the zoning adoption it cannot be recognized. And here again, that's inconsistent with the code.

The code never states that a post 56 structure cannot require non conforming use status and in the absence of a building permit from 62 cannot be treated as evidence of illegality.

Especially when the code provides alternative evidentiary pathways.

These cases are based on circumstantial evidence.

What would a reasonable person conclude after hearing all the evidence?

The city, to my knowledge, has issued NCU certifications without actual city permits prior to the change in the code.

Slide 5.

Although the R1 did not allow duplexes, the city has no evidence showing the duplex was illegally established in 62 historical permits from that area are often missing.

You heard testimony from Mr. Cotton general, saying that was the best database or information that the city has.

Concerning historic records.

Historical permits from that area are often missing.

27 to 97.3 of the code recognizes this and allows applicants to rely.

By an alternative forms of documentation, all which been provided so the the burden is not to prove disprove illegalities, it's to present credible circumstantial evidence of lawful establishment which the applicant has done.

Slide 6.

The evidence is inconsistent with the possibility that the duplex existed before 56 and was reconstructed in 62. If the duplex predated R1 zoning, it would have been lawful when established under section 27297.

Reconstruction does not extinguish non conforming use status absent abandonment. There's no evidence of abandonment and continuous occupancy supports continuous use.

Slide 7.

More than half a century City's own records consistently recognize this property as a duplex, which will go over in a couple minutes.

The site is database 62 property card. Multiple property assessments in five decades of poke directory, all document duplex use Slide 8 Ryan.

OK, I'm gonna jump in there for the next few slides and turn it back over to Mark.

Slide 8's going over one of the most compelling pieces of evidence in our opinion is the city's own internal site, us record.

Which lists the uses duplex and again under section 27297. Three the city must evaluate public records like this in determining legal nonconformities.

In 1962.

I'm sorry, the 1962 property card created at or near the time of construction identifies the structure of the duplex. This is direct evidence of legal establishment. It must be credited under the code.

And as Mark alluded to, these pictures were taken last week and a few of them just show the front and the rear. And as Mark stated earlier, you're gonna notice the front has those two Stoops or porches on the outside of the structure. You're gonna see that same.

Recognition on the property card and I can pull that up separately just so.

So you see these two entrances right here and then there's a back porch.

And that's exactly what is still out there today.

Also on the right you'll notice 2 meters.

You know that's not, you know, the clear definer of everything.

But it does have two meters for units A&B.

Another point just for construction, you can see the house is made of block, so this is not you know this is the original structure according to the property card there hasn't been alterations and it's in the same exact footprint as it was per the property card you.

Know a lot of times in Tampa you see structures with janky additions to the back. But this is a completely block house in its original configuration.

And so slide 1111 is going over the continuous duplex occupancy. The city's denial letter references 13 pole directory entry entries from 1968 through 2022, documenting occupancies of units A&B. Pulk records are explicitly listed in section 27297.

As valid evidence of continuous operation, and these listings definitively show no abandonment for more than 50 years.

So under section 27297, the applicant must show continuous operation, maintenance and possession of permits or applications evidencing intent to maintain the use.

The evidence overwhelmingly satisfies all three requirements.

And there's no evidence of abandonment or discontinuation.

Now what I'd like to do is just go over a little bit on the sites information the city has already relied on sites information to confirm the historic zoning for the property.

And I'll put the card up on screen since it might be easier to as I read this.

Oh oh, power.

The city has already relied on scientists information to confirm the historic zoning for this property.

The city considers the zoning information on this document to be accurate and reliable.

Then the other information on the same record should also be taken into account, especially since it consistently identifies the structure as a duplex site.

This information includes 4 separate indicators showing the property as a duplex, the top center, the address is listed as 4312 W Laurel Street.

Units A&B reflecting 2 units.

The right side of the card. It lists residential units as two the left middle, the unit number field again shows units A&B and the bottom left is the standard land use code or **** code.

It's identified as 1620 with duplex identified all four indicators point to the same conclusion.

And now just some of my past experience based on my seven years working for the City of Tampa, ending as a planning and development coordinator and zoning, I can confirm that site has long been used.

Used as a tool for reviewing historic zoning information and last legal uses staff would regularly rely on it to verify previous zoning districts and to confirm duplexes, triplexes and other uses. Specifically, I recall that when rental certificates were being issued, the zoning staff, including myself, regularly relied on.

This information incidentally to issue those certificates whenever the data was not available in Excel.

The city's, which is the city's current permitting system.

This information included dwelling accounts, just like the affirmation.

And then with that, I'll go back over to the presentation for the conclusion for Mark. So, Mr. Roth.

He had her testimony that situs is the most reliable and extensive database the city has, but for its new Sella system. In it archives historical documents. So in, in order to be insight is OK.

These are structures that are permitted.

That end up in this database, so back to my argument about vested rights.

Stopo. Clearly the city has confirmed.

Somewhere along the line that.

This.

Duplex.

Was was permitted.

OK.

And notably, like Ryan indicated, the city relied on the slightest document to confirm what the zoning was under Chapter 43 and 43.

A city is not even presented, Mr. Schwab, any kind of zoning map at this hearing.

That's how much they relied on situs. OK as the gospel in terms of what the zoning is, you haven't seen a map. The only map in the record right now is the one I provided, which says the property was zoned R2 in 1951.

On.

The evidence supports pre 1956 non abandoned duplex.

If you're going to rely solely on the property appraiser record card that shows 1962 here again, going back to situs is, there was a permit issued for this structure.

So under the doctrine of vested rights or equitable estoppel, it would be considered

a lawful non conforming.

Use.

So we think that the recommendation City Council should be to reverse Mr. Cotton's recom.

Mendation, we'll try and answer those.

And.

H HEARING OFFICER, DEREK SCHROTH 47:29

Just the exhibit. So it looks like from the original list there were the inclusion of the official map and then also the photos. If you could mark those.

CP Camaria Pettis-Mackle 47:42

OK.

H HEARING OFFICER, DEREK SCHROTH 47:44

Perhaps as F&G.

Because your original exhibits were.

CP Camaria Pettis-Mackle 47:51

Photos were in the PowerPoint presentation, and then the zoning map is listed in our hearing exhibits as item Exhibit 4, and I don't you don't have that because again, we thought you were gonna be here today. So we printed out a paper copy of it.

H HEARING OFFICER, DEREK SCHROTH 48:08

Yeah, if you don't mind, just just marking those so they're identified as F&G, even if they're not sequential.

Because what I have is petitioners exhibits A through E that were emailed to me that consist of the formal decision application boundary survey, original property tax.

CP Camaria Pettis-Mackle 48:22

I can't.

I came from.

Derek, that came from city staff or city attorney's office, we didn't.

We didn't provide our exhibit list until today.

H HEARING OFFICER, DEREK SCHROTH 48:32
All right, so does your current exhibit list include the all the items that you've shown at this hearing?

CP Camaria Pettis-Mackle 48:34
So.
Yes.

H HEARING OFFICER, DEREK SCHROTH 48:41
OK.
Great. If you could forward that to me, if you haven't already with those exhibits just so that I can clearly identify in the recommended order what was presented that would be helpful.

CP Camaria Pettis-Mackle 48:51
Will do, Sir.

H HEARING OFFICER, DEREK SCHROTH 48:53
Mr. Bentley, at this point, do you have any questions for Mr. Massey?

CP Camaria Pettis-Mackle 48:53
Mr.
For me.
No, I don't.

H HEARING OFFICER, DEREK SCHROTH 49:06
All right, attorney Pettis. Mackel, do you have any questions for?

CP Camaria Pettis-Mackle 49:09
Yes, I do.

H HEARING OFFICER, DEREK SCHROTH 49:10
Mr.

CP Camaria Pettis-Mackle 49:11

So this is to whoever they vote.

There's both testimony from both.

When you testify that.

The property.

The city staff relied on the folk directory information that was submitted. That pole directory information was submitted by the applicant, correct.

It may have been. I'm not aware of it.

You're not aware of what was submitted by the applicant for the FDN.

Yeah, off the top of my head, I'm not.

I think that's irrelevant. K 'cause, the code says pole directories at city shall consider those.

They're available too.

That's, that wasn't my question. So I don't care what your question was, it's.

H HEARING OFFICER, DEREK SCHROTH 50:01

Let me let me interject right now.

I think it was better to direct these comments to Mr. Massey.

Mr. Bentley wasn't even sworn in, I don't think.

CP Camaria Pettis-Mackle 50:10

I don't know that anyone.

H HEARING OFFICER, DEREK SCHROTH 50:11

And then Mr.

Yeah, Mr. mass.

And I'm pronouncing your last name correctly, am I not?

CP Camaria Pettis-Mackle 50:17

Manassas.

H HEARING OFFICER, DEREK SCHROTH 50:19

Manassas. I apologize, Sir, I thought.

I thought maybe I had it wrong.

So Mr. Manasseh, the testimony, were you sworn in?

CP **Camaria Pettis-Mackle** 50:23

I've heard.

No, I didn't.

No.

H **HEARING OFFICER, DEREK SCHROTH** 50:30

All right. So if you could please raise your right hand, I'm going to do a modified oath.

Alright, all the testimony that you previously provided was that true and correct and deemed to be Underoath at the time you made it?

CP **Camaria Pettis-Mackle** 50:41

Yes, Sir.

H **HEARING OFFICER, DEREK SCHROTH** 50:42

And do you swear affirm that you will tell the truth and nothing but the truth?

CP **Camaria Pettis-Mackle** 50:47

Yes, Sir.

H **HEARING OFFICER, DEREK SCHROTH** 50:48

OK, if you don't mind, attorney Pettis address your questions to Mr. Massey and sorry, Mr. Manasseh. And then Mr. Bentley can make whatever objections he deems appropriate, and then I'll rule on them.

CP **Camaria Pettis-Mackle** 50:49

No.

Sure thing.

So, Mr. Manasseh, when it was testified earlier that.

The poll director items the the applicant for a formal decision. They are required to provide information to support their application.

Correct, correct.

So in reviewing for the request, it's the the burden is on the applicant to provide the information to support their request that they're asking for, correct.

Correct. And the applicant did.

We didn't file the formal decision. We filed the appeal.

That's fine.

So in reviewing the information that was submitted.

By the applicant.

And now this is today as a dynopo hearing.

There's been no, as testified before, there's been no permit to show building permit to show the legality of the legal that it was legally established or a permit permitted as a duplex.

Correct. I think that's incorrect.

You had you had Eric testify about Cynis was a combination of permitting system and other information.

Sinus information indicates a duplex, so it's just the situs docket that sits document that was submitted by the applicant that you're relying on to show that it was submitted by the applicant. Because city staff's the only one that has access to that. So there had to be conversation between city staff to get that document. OK, so is it possible?

In 1962, what's possible that some buildings are built without a permit, correct?

Of course. OK.

And you testified that in your previous employment with the city.

You also looked at the rental certificate program to determine use or what the use was regarding a matter.

Sure, I could elaborate on that. When it came back through zoning, the city had thousands of records of rental certificates that had to be approved.

So code enforcement sent them to zoning and you could verify.

This with staff staff. I think all of the staff planners got assigned rental certificate cases. Some staff planners had access to site as some don't.

I had access to sites because I did rezonings as well. So when an alcohol petitions and we used it regularly to definitively determine the last legal use of a property.

So in those cases where the rental as reference in my testimony of the rental certificates, one of the ways is either everybody in the city of Tampa getting a rental certificate.

Have to go through a formal decision or zoning staff would determine that through

the information sites or other permitting systems that there's enough to say there was two legal units, so you can have a rental certificate. So in that case with the rental certificates, if I were if.

I were to take this information from situs. I would have issued a rental certificate for 2 units.

So if there is a record showing associated with a property that our rental certificate was not given for a property, is that significant?

So let me let me elaborate on that.

I don't think so, in my opinion, because it depends on who reviewed it. 'cause not everybody had access to sites, so somebody might have had access to axela, which only goes back to 2014, 2016 somewhere around there.

So if they typed in the address in Excel and nothing came up for permitting history, and they checked with construction services and nothing was there, if that if that planner didn't have access to sites, they wouldn't see that same information.

And I could.

I could test it.

I'll testify that I was one of few people at zoning that had access to situs.

So OK, I have if I just may have one moment, sure.

OK, I have no further questions for this witness.

H HEARING OFFICER, DEREK SCHROTH 54:59

Mr. Bentley, do you have any follow up questions for Mr. Manasseh?

CP Camaria Pettis-Mackle 55:01

Yeah, just one for Mr. Massey. Ryan.

Got invited, changed my name.

Everybody forgot his name.

I said manassi. It's cool.

It's a guy.

I've heard every variation.

Didn't I say manassi?

Yeah, yeah. I just came back from Peru, man.

I've always put AE at the end of his name 2ES.

He'll forgive me.

I hope it doesn't matter but anyhow.

In your professional opinion, based on your experience.

Experience especially is your time as a city employee in the zoning department.

Or development services, I'm sorry.

If a use is identified on the site as record, OK is the last legal use, but that generally indicate that it was a permitted use.

Yes, I mean from my last position of leaving as planning development coordinator, we'd use sites to look up the last legal use on rezoning applications. And actually when I did alcohol petition, it was the same thing.

So if you had access to sites you utilize it to figure out.

The last legal use.

Because again, as I think Eric mentioned earlier, City records can be spotty after a certain amount of time.

It depends on what information we have so.

Derek, that that's all I have. Thanks.

H HEARING OFFICER, DEREK SCHROTH 56:21

All right.

And Mr. Bentley, do you have any other witnesses or evidence that you'd like to present at this time?

CP Camaria Pettis-Mackle 56:26

No, thank you.

H HEARING OFFICER, DEREK SCHROTH 56:28

At this point, we'll allow for public comment.

Are there any members of the public who would like to speak on this matter?

Seeing none, we'll close the public comment portion of the hearing.

The city.

Do you have any closing remarks at this time?

CP Camaria Pettis-Mackle 56:44

I don't know if we wanna.

Can I just have one moment please?

H HEARING OFFICER, DEREK SCHROTH 56:50

Yes, absolutely.

CP Camaria Pettis-Mackle 56:50

It's.

Yeah.

So Mr. Schroff on again proposed rules of procedures #5.

I'd ask to be able to recall Mr. Cotton based upon what was based upon what was testified to.

H HEARING OFFICER, DEREK SCHROTH 57:16

You have the ability to do that as a rebuttal witness.

CP Camaria Pettis-Mackle 57:19

Yes. So I asked to call Mr. Cotton.

H HEARING OFFICER, DEREK SCHROTH 57:23

All right, Mr. Cotton, you've been previously sworn in. Please proceed.

CP Camaria Pettis-Mackle 57:28

So I just want to clarify some information regarding.

The sidest database.

The information is that's that's in that database when it was created in the mid 80s.

Pull information from a number of resources, including the property Appraiser's office so that the slot code, the slot code that is in the database would have been pulled from the property appraiser so they showed the use as being a duplex.

That's what we reflected reflected inside us.

This property actually did apply for a rental certificate in 2017 and was denied.

Rental certificate with the with the comment about seeking a formal decision.

The app.

The property owner at the time did not did not apply for it.

I knew they were then cited in 2019. I don't.

This is the same property owner.

Not in 2019.

For for a use with the same solution, get a formal decision.

The the database is used for information, but it's just one a number of things that we look at because even if because there are cases where the slot code will say it's a quadplex.

But the last permits they've ever pulled on it were for single family residential.

So it's just a database with a moment in time when information was put into it and.

There's often information that's that's that's so just another one of those resources that we use when we look at stuff for this specific case, it comes down to the proper says it was built in 1962 and the zoning went into effect for the R1Z.

In 1956.

That's the basis of that. Basically summarizes our position of how we came up with the determination of not and it was not legally established.

And Mr. Cotton, does the Hillsborough County Property appraisers office.

Do they?

And the information that's on his board county property appraisers.

Do they look to the city permitting program to determine if there was a permit applied for?

That could that.

Time frame.

No, today they do today.

Permit information is available on the property.

There's office, but at the time that this property was built and the information that was pulled from sites, that connection did not exist.

No, ma'am, it did not exist back in the 60s and the information that was inputted into the site is program that might have been sourced from the Hillsborough County property appraisers. That would have been obtained from that information or that data would have been.

Could have possibly been.

Obtained from the property owner at the time, correct, correct and not necessarily.

Confirmed with the city of Tampa about whether it was legally permitted.

That is correct.

OK, I have no further questions.

I've got it, OK.

H

HEARING OFFICER, DEREK SCHROTH 1:00:20

Mr. Bentley, do you have questions?

CP

Camaria Pettis-Mackle 1:00:24

Eric, what if Citis would have said 1956 year built?

Would you have questioned that as being ambiguous?

No, it doesn't reflect.

I don't believe reflects the year built in.

So we have one like that, OK.

You indicated that cytus.

This collects information from different sources. OK.

And sometimes that can be questionable or ambiguous.

Correct.

I just said it came from different sources. Yes. Pardon me.

I think it has come from different sources.

Can you tell me the status?

Yeah.

Do you want it on screen or just a copy?

So I'm looking at the sites document and it says S.

SLU code duplex. You're saying that comes from the property appraiser.

Yes, Sir.

OK.

So why would the property appraiser characterize it as a duplex?

It was a single family home, the property appraiser. If I convert my house to a triplex and the property appraiser's aware of that, they will call my house the Triplex because it's a taxing entity.

They're just whatever the the highest and best use they can tax it for. That's physically there. They will tax it for. Yeah. But on this particular site.

Is it indicates in like 3 or 4?

Different locations on on the document that there's a unit A&B.

Pardon me, two residential units.

Yeah, two residential units, so.

That didn't come from the property.

Appraiser did the addressing in when that was done was either from the city of

Tampa or it could have been. Remember, if there's a proper, there's a unit out there or a building that has to be addressed by E911 standards. So if there were 10. Units in there, they would have 10 different numbers or letters assigned to them. That's a requirement of the 911. Mm-hmm.

So that's where that information is pulled from, OK?

So here again site is says I think 4 locations, there's units A&B and you're saying that the address identification comes from the city of Tampa.

That's my understanding, yes.

Yeah, 'cause an 911 requirements.

OK. Is there a possibility that a permit was issued for construction of a duplex by mistake by the city? I can't testify to that, but mistakes are always a possibility.

So that's there was a possibility? Possibly yes, I can't.

I can't testify to that, but whether it was or not.

Derrick, that'll do it in just one final comment.

Here again, I cited the cases early on in the event that there's any doubt or ambiguity.

Her question about land use regulation, or application thereof, that should be construed in favor of liberal use of the property by the property owner.

H HEARING OFFICER, DEREK SCHROTH 1:03:43

Understood at this point, does the city attorney's office have any closing argument?

CP Camaria Pettis-Mackle 1:03:48

Yes, I do, Sir.

H HEARING OFFICER, DEREK SCHROTH 1:03:52

Please proceed.

CP Camaria Pettis-Mackle 1:03:54

Thank you.

So I provided already a copy of Code section 2027 Dash 61 which governs the review process.

And in the code, that code specifically states in 27 Dash, 61 subsection J1C3 little I that the burden of proof.

For this hearing is with the petitioner.

You heard testimony will receive documents that the continued use of this property was a duplex, as testified by Mr. Cotton, the code specifically.

Addresses nonconformity in order to establish a nonconformity, the petitioner would have to, and the applicant would would have had to provide or establish that it was legally permitted building.

In order to show that it was a non conforming the consistency with a non conforming use, there's been no presentation.

No evidence submitted that a permit was issued to legally establish this property as a duplex.

The code when you review the code does not allow Mr. Cotton the authority to waive the requirement to.

In that determination of legal non conforming.

He testified that he did not receive, did not review.

A permit associated with this property, and therefore he had to deny the request for legal nonconformity on this property.

The city will ask would ask that the hearing that you, Mr. Schroth, as a hearing officer, denied the petition for review and uphold the decision of the zoning administrator.

Derek, I just have.

H

HEARING OFFICER, DEREK SCHROTH 1:05:57

All right.

Thank you.

Yes, Mr. Bentley, do you have any closing remarks before we conclude?

CP

Camaria Pettis-Mackle 1:06:00

Yeah, just a couple comments.

Is Miss Pettis Mackle indicated that?

There's no evidence of legal permit being issued for construction of the duplex.

And I guess I'd have to agree with that.

There's no permit and I think it's just fundamentally inequitable and unfair that the city takes a position. Hey, you can't.

You're going to lose your status or you're illegal.

Oh oh, and oh, by the way, we purged our records of the evidence that you would need to demonstrate to satisfy us that it's legal non conforming use.

So they trash or purge all their records.

Then they turn around and throw the property owner's face, saying, hey, you know, you should have had a permit and said, well, there's no permit to be found, OK.

So what's the best evidence city has?

It's the city information which indicates OK.

That there was a permitted.

Structure on that property.

It's my understanding if if something was illegal, it wouldn't.

Be provided or put in to the site as records.

So that's in this this situation, we provided the best evidence we can to demonstrate that the legal, non conforming duplex, OK, along with the zoning map now probably a plausible explanation as to what went down would be because I showed you the zoning.

Map it said R2.

You know, maybe some reviewer or whatever, just looked at that map because that was in existence till 56 and the code changed in January 1956.

It's my understanding, OK, when it went from the R2 to the R1 under chapter 43 or 43, eight.

So you know, maybe here again that's speculation, but I don't think a property owner should be penalized.

They've been paying taxes as a duplex for the last 50 or 60 years and all my clients predecessors entitle, you know, they kept the property in compliance.

The the evidence shows that.

You know the construction was if you compare the footprint under the property appraiser card from 62 to shipped photos like we showed you today, that absolutely nothing has changed, OK.

So I just want to make that clear that it's you know this this suggestion that we didn't provide the best evidence, well, the best evidence doesn't exist so.

Thank you.

H

HEARING OFFICER, DEREK SCHROTH 1:08:44

Thank you.

Thank you all for your time today, if you could.

Submit proposed recommended orders by December 17th to me in Word format.

By e-mail.

I would appreciate that and.

Mr. Bentley, if you need some prior orders of mine, you may have them from other cases.

I'd like the exhibits referenced.

By letter or number, and then a brief description of what they were both from the city and from the petition.

In her side, if there are no further comments, I'll close the public hearing.

CP **Camaria Pettis-Mackle** 1:09:17
OK, sounds good.

H **HEARING OFFICER, DEREK SCHROTH** 1:09:20
Are there any further comments?

CP **Camaria Pettis-Mackle** 1:09:23
No, Sir.
Thank you. Appreciate it.

H **HEARING OFFICER, DEREK SCHROTH** 1:09:26
We'll close the public hearing then on FDN 25156.
Thank all of you for your time. Appreciate it.

CP **Camaria Pettis-Mackle** 1:09:32
Thank you.
Thank you.

● **Camaria Pettis-Mackle** stopped transcription