

CITY OF NORTH PORT
SARASOTA COUNTY, FLORIDA
4970 City Hall Boulevard North Port, FL 34286

CODE ENFORCEMENT DIVISION

CITY OF NORTH PORT, FLORIDA,

Petitioner,

v.

NGUYEN MINH
6510 76TH AVENUE NORTH
PINELLAS PARK, FL 33781

Respondent,

ADDRESS OF VIOLATION:
5000 S. Chamberlain Boulevard
North Port, FL 34286
Parcel ID: 1006008624

Case Nos. CECASE-24-4292 and

ADDRESS OF VIOLATION:
5200 S. Chamberlain Boulevard
North Port, FL 34286
Parcel ID: 1006008623

Case No. CECASE-24-4293

MOTION FOR CONTINUANCE OF HEARING AND ISSUANCE OF SUBPOENA

Respondent Nguyen Minh and Lincoln Capital Acquisition LLC, by and through their undersigned counsel, hereby move for a continuance of the hearings scheduled for May 22, 2025, and for the issuance of a subpoena for evidence and testimony of witnesses pursuant to Section 2-509(2)-(3) of the Code of the City of North Port, Florida, and Section 162.08, Florida Statutes, in the above-referenced actions, and in support state as follows:

1. The City of North Port issued Affidavits of Violation and Notices of Mandatory Hearing for May 22, 2025, regarding the above-referenced properties. Pursuant to the Contract

for Purchase and Sale of Real Property dated September 8, 2023, between Minh B. Nguyen (Owner/Seller) and Lincoln Capital Acquisition LLC (Buyer), Lincoln Capital Acquisition LLC has an equitable and legal interest in the subject properties as a contract purchaser under Florida law (collectively, the “Movants”).

2. Movants request that the two above-referenced cases be removed from the code enforcement hearing calendar for May 22, 2025, or alternatively be continued because the hearings have been insufficiently noticed and Movants have had inadequate time to obtain the evidence necessary to respond to the City’s allegations, including the testimony and evidence of ECS Florida LLC.

3. The City’s Notices in these actions are plainly inadequate because they fail to notify Movants of the most basic information required to respond. The Notices and Affidavits of Violation do not cite the code provision the City alleges has been violated. Even the City’s inspection reports fail to describe with reasonable particularity the code section(s) which the violator has allegedly violated and do not make specific reference to either code enforcement case or case number.

4. It appears City staff may been in communication with ECS Florida LLC regarding the subject properties since Hurricane Milton in October 2024. ECS Florida LLC was engaged by Lincoln Capital Acquisition LLC merely to conduct subsurface geotechnical exploration in connection with due diligence related to the Contract for Purchase and Sale. ECS Florida LLC has first-hand knowledge of its activities on the properties in 2024, and critical evidence, reportedly including drone imaging. However, ECS Florida LLC is not the Owner of the subject properties and on May 20, 2025, ECS Florida LLC declared it has “no reason to be involved since neither ECS nor its client has a Citation from the City.” It is requested that a subpoena for

all relevant evidence and testimony of witnesses be issued to ECS Florida LLC (Registered Agents Inc., 7901 4th St N, Suite 300, St. Petersburg, FL 33702) pursuant to Section 2-509(2)-(3) of the Code of the City of North Port, Florida, and Section 162.08, Florida Statutes, so Movants may adequately respond to the alleged violations.

5. Absent cooperation from ECS Florida LLC, Lincoln Capital Acquisition LLC submitted a public record request to the City on or about May 9, 2025, and received responsive documents on May 20, 2025. Movants require more than two days to evaluate the documents received.

6. There is no injustice or prejudice to the City of North Port. Postponing the hearing until Movants can investigate the situation and compel witnesses to attend the hearing will not alter any issue for the City. On the other hand, forcing Movants to proceed with the code enforcement hearings without giving them reasonable notice and opportunity to gather relevant evidence will result in denying Movants their constitutional and statutory rights.

7. Failure to grant a continuance would deny Movants their procedural due process. If the City proceeds with the code enforcement hearings on May 22, 2025, it will violate Movants' procedural due process rights, by denying Movants an adequate opportunity to prepare for the hearing. Both Chapter 162, Florida Statutes, and the City Code mandate that fundamental due process be afforded. Fla. Stat. 162.07(3)("fundamental due process shall govern the proceeding") The circumstances of this case mandate that sufficient time to prepare for a code enforcement hearing and to special set the hearing so as to have adequate time to present the evidence and to argue the points of law.

8. Standards for sufficiency of notice and opportunity to be heard in order to meet due process requirements have been established by the Supreme Court of the United States and

by the various Florida courts. *Matthews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976); *Wilson v. County of Orange*, 881 So. 2d 625, 630 (Fla. 5th DCA 2004).

Matthews requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

Wilson at 630-31. Due process is only satisfied by proper notice and an opportunity to be heard. Fla. Const. I, §9. The opportunity to be heard to satisfy due process must be at a meaningful time and in a meaningful manner. *Id.* The City has not afforded Movants adequate time given the complex factual and legal issues.

9. Movants have not had adequate time to request the issuance of subpoenas from the Code Enforcement Board, which denies Movants the right to present all witnesses or to initiate and complete public document requests for necessary documents for evidence.

10. Although trial courts and administrative law judges enjoy broad discretion in ruling on motion for continuances, the exercise of discretion in ruling on motions for continuances is not absolute. *Id.* Whether a party was denied the opportunity to be heard, and was thus denied due process, is reviewed for abuse of discretion. *Id.* at 924. A reviewing court should consider the following factors when evaluating whether a trial court has abused its discretion in ruling on a motion for continuance:

11. Whether the movant suffers injustice from the denial of the motion; 2) whether the underlying cause for the motion was unforeseen by the movant and whether the motion is based on dilatory tactics; and 3) whether prejudice and injustice will befall the opposing party if the motion is granted.

12. In this case, Movants will be substantially prejudiced and will suffer an injustice if required to proceed with the hearing.

13. The City's setting of the hearings is procedurally improper. The setting of these hearings is procedurally improper and premature. Contrary to the rules governing code enforcement proceedings, the Code Inspector failed to deliver prior notification to the Owner of a specific time period within which to correct the alleged violations and failed to afford Movants a reasonable time to implement a curative plan to correct the alleged violations prior to setting this hearing for May 22, 2025. The City has failed to follow its rules governing enforcement procedures by: (1) failing to identify what code provisions were allegedly violated, (2) failing to establish a reasonable time by which the cure must be completed, and (3) by failing to specify a time to correct the violation, which should be guided by a reasonableness standard as set forth in the rule.

WHEREFORE, Respondent Nguyen Minh and Lincoln Capital Acquisition LLC respectfully request that the hearings in the above referenced actions be continued for 60 days, and the hearing officer issue a subpoena to ECS Florida LLC for the new hearing date for witnesses and all evidence relevant to these proceedings.

Dated: May 21, 2025

Respectfully submitted,

/s/ Carl Roberts, Esq.

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