

MAYOR
Hal J. Rose

DEPUTY MAYOR
Stephen Phrampus

COUNCIL MEMBERS
Diana Adams
Pat Bentley
John Dittmore
Daniel McDow
Andrea Young



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CODE ENFORCEMENT BOARD

AGENDA

Thursday, January 19, 2023
5:30 pm
City Council Chambers

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. ADOPTION OF MINUTES**

The Board is asked to approve the minutes of the November 17, 2022 hearing.

- 5. SWEARING IN OF THOSE PRESENTING TESTIMONY**
- 6. OLD BUSINESS:**

A. Case No. 22-0185 (731 Samuel Huntington Lane)
JONATHAN AND JOY PHELPS, et al.
Violation of Section 98-1122 – Maintenance of walls and fences
Order imposing penalties and liens

- 7. NEW BUSINESS:**

B. Case No. 22-0225 (2260 Crippen Court)
THE RESERVES OF MELBOURNE LLC., et al.
Violation of Section 26-100 – Prohibited accumulations of garbage and trash
Order finding violations and penalties

C. Case No. 22-0219 (9075 Ellis Road)
MADISON HOLDINGS OF BREVARD, et al.
Violation of Section 2-93 – Repeat violations
Violation of Section 118-178 – Work started before permit issuance
Violation of Section 18-211 – Site Plan
Order finding violations and penalties

- D. Case No. 23-0006 (4260 W New Haven Ave)
BAER'S FURNITURE CO INC., et al.
Violation of Section 30-5 – Penalty for violation of fire prevention codes
Order finding violations and penalties

8. ADJOURNMENT

All persons wishing to be heard should appear in person at these hearings or send written comments to the City Clerk. All persons and parties are hereby advised that if they should decide to appeal any decision made by the City with respect to any matter considered at the public meeting or hearing described in this notice, they will need a record of the proceedings, and for such purpose, said person or party may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (Chapter 286, Florida Statutes). In compliance with American with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the City's ADA coordinator at 321-837-7774 at least 48 hours before the hearing.

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CODE ENFORCEMENT BOARD

MINUTES

November 17, 2022

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chair Chris Gibbs called the meeting to order at 5:32 pm and led the Pledge of Allegiance.

2. ROLL CALL

Present: Chair Chris Gibbs, Vice Chair Sandra Michelson, Board Members Robert Luber, James Shipton, Linda Palardy and Kimberly McGibany.

Absent: Board Members Andrew Jones and George Bosch

Board Member Luber moved to excuse Board Members Andrew Jones and George Bosch. Seconded by Board Member Michelson motion carried 5-0.

Also present: Building Official Tom Forbes, Code Enforcement Inspectors Roy Black and Camille Moore, Interim City Attorney Clifford R. Repperger Jr., Administrative Support Specialist Lisa Pilsbury and other members of the public.

3. ADOPTION OF THE MINUTES

Board Member Shipton moved to approve the minutes from October 20, 2022. Seconded by Board Member Luber motion carried 5-0.

4. SWEARING IN OF THOSE PRESENTING TESTIMONY

Lisa M. Pilsbury swore in those presenting testimony.

5. OLD BUSINESS

Case No. 21-0061

Violation of Section 98-1122. – Maintenance of walls and fence

Code Enforcement Inspector Roy Black presented Case No. 2021-0061 for property located at 4345 W New Haven Ave and owned by Cinema World of Florida Inc., et al.

Inspector Black have been sworn in testified:

Inspector Black explained prior history of case to the Board; which was heard on January 20, 2022 and September 15, 2022.

9/15/2022 – Board reduced and imposed lien in the amount of \$1,000

9/16/2022 – Order imposing and reducing fines recorded with Clerk of the Court/Brevard and mailed

11/11/2022 – Code Enforcement received check in the amount of \$1,000 for imposed lien.

Inspector Black recommends order releasing lien for property located at 4345 W New Haven Avenue.

Board Member Luber moved to order releasing lien. Board Member McGibany second, motion carried 5-0.

Case No. 2022-0040

Violation of Section 2-93. - Repeat Violations – COMPLIED

Violation of Section 18-151. - Required

Violation of Section 26-207. - Storing, depositing or keeping abandoned property in enclosed building

Violation of Section 50-152. - Business Tax Receipt required

Violation of Section 66-552. - Required for certain developments; exemptions

Code Enforcement Inspector Roy Black presented Case No. 2022-0040 for property located at 7629 Coral Drive and owned by Xa Thi Tran, et al.

Inspector Black stated this case is tabled.

Vice Chair Michelson asked what happens to the thirty (30) days they were given. Inspector Black replied this case was tabled at last month's Code Board meeting as well. A site plan has been submitted and engineering returned the plans with recommendations/modifications which are in the process of being completed.

6. NEW BUSINESS:

Case No. 2022-0185

Violation of Section 98-1122. – Maintenance of walls and fences

Code Enforcement Inspector Roy Black presented Case No. 2022-0185 for property located at 731 Samuel Huntington Lane owned by Jonathon and Joy Phelps, et al.

Inspector Black haven been sworn in testified:

9/9/2022 – Received phone call from Rich Boprey of Parks and Recreation indicating a fence has fallen on the ball field at Clements Wood Park. He inspected, photographed and entered into the case file. Requested Notice of Violation.

9/13/2022 – Mailed Notice of Violation

9/15/2022 – Received voicemail from respondent requesting call back. Called back at 4:48 pm and received the voicemailbox is full message.

10/6/2022 – Tabled until November's Code Board

11/2/2022 – Received request to mail Summons.

- Notice on other visits owners are making improvements
- Did not bring to Code Board due to only small improvements had been made
- As of today (11/17/2022) drove by and the fence is still not repaired
- Presented photographs

Board Member Shipton asked did they pick up and prop the fence against the house. Inspector Black replied yes, using the old section and looks like new 4x4's at the end.

Board Member Luber asked if the fence came down before the storm. Inspector Black replied yes.

Inspector Black recommends finding the violations.

Board Member Shipton moved finding the violations. Board Member Luber seconded, motion carried 5-0.

Inspector Black recommends granting ten (10) days to come into compliance then \$25 per day thereafter if not in compliance.

Board Member Luber moved to grant ten (10) days to come into compliance then \$25 per day thereafter if not in compliance. Board Member McGibany seconded, motion carried 5-0.

Case No. 2022-0136

Violation of Section 18-151. - Required

Violation of Section 50-152. - Business Tax Receipt required

Violation of Section 98-362. – Principal uses and Structures

Code Enforcement Inspector Camille Moore presented Case No. 2022-0136 for property located at 1770 S John Rodes Blvd. and owned by MC192 LLC., et al.

Inspector Moore haven been sworn in testified:

7/21/2022 – Received phone call regarding mini car lot established at address.

7/22/2022 – Inspected and photographed vehicles for sale parked on grass with the building located in the rear as the office. Left a door hanger with violations and gave two weeks to comply. Requested Notice of Violation due to out of state listed owner and information from Planning and Zoning Department regarding individual had been advised back in February this business would not be permitted without Site Plan.

7/26/2022 – Mailed Notice of Violation

8/2/2022 – Property owner came into City Hall and met with Inspector Moore and spoke with Planning and Zoning regarding what is required. Was advised to maintain contact with Planning and Zoning to assure of holding off on fines.

8/25/2022 – Received voice message from Consulting Group on behalf of Property Owner inquiring about what is necessary; forwarded via email to Planning and Zoning Department.

8/29/2022 – Consultant spoke with Planning and Zoning regarding requirements on site; was going to contact property owner then request meeting with Planning and Zoning, Code Enforcement and property owner to discuss situation. Inspector Moore told Planning and Zoning would extend inspection for a month then request Summons if there was no meeting in the interim.

9/20/2022 – Met with Christy Fischer, Property Owner and their engineer to discuss needs. Advised Property Owner and engineer to maintain communication with Planning and Zoning, if the changes become cost prohibitive then the clock would start on the code enforcement (Summons) process.

10/20/2022 – Emailed Planning and Zoning to inquire about communications with their engineer. Christy Fischer replied there had been no communication and requested the code process continue. Requested Summons.

10/31/2022 – Mailed Summons

11/16/2022 – Re-inspected and photographed – no change.

Mr. Allan Whitehead, Attorney with Frese, Whitehead & Anderson, P.A., 2200 Front Street, Ste 301, Melbourne, FL 32901, was sworn in and testified:

- Business has been operating since April 26, 2012 and has licenses to show this location as a small car lot.
- This property was not annexed into the City of West Melbourne until 2014
- Believe this is a non-conforming use which should be grandfathered in until the business ceases to operate
- Property owner wants to cooperate with the City of West Melbourne to resolve this issue
- Property owner has engaged with an engineering firm to prepare a site plan which was repeatedly requested, however this could be a very expensive process and needs to discuss if this will be grandfathered in.
- Need some requirements on the site plan which would ease the cost
- Requesting a brief period of time to work with Planning and Zoning
- Concerned about the cars on grass vs pavement as the code requires and should be grandfathered in

Board Member Shipton asked if this business has been in business since 2012 and annexed into the City of West Melbourne in 2014. Mr. Whitehead replied yes.

Board Member Shipton asked when the business owner was annexed into the City of West Melbourne did the owner submit any type of licenses where he had applied in 2012 with whatever entity he was located in at the time.

Mr. Whitehead replied:

- I do not have the answer as I am just now getting involved.
- We have copies of the licenses going back to 2012 at this location and renewing each year.
- I do not understand why in eight (8) years this has not been brought to the Boards attention.
- Will see if anything was submitted in conjunction with the annexation.
- The annexation was primarily for another connected parcel of property Cumberland Farms.
- This parcel of property was not to be part of the original annexation

Board Member Luber asked if someone filed a complaint against the property. Inspector Moore replied yes.

Board Member Shipton asked if the complaint was regarding this lot being operated as a car lot. Inspector Moore replied yes as it was suddenly a car lot. Vice Chair Michelson stated the cars just appeared this year.

Inspector Moore replied:

- She has driven this road almost daily for the past year and never noticed the cars and then noticed the cars.
- Could have been using this as their mailing address but not sure about the operating address.
- Believes during the annexation process, a site plan would have been part of the process
- There is no site plan for this business operating at this location
- This property is zoned correctly to have a car lot. However, there are certain requirements which need to be met. A paved surface, retro fitting the residential building to make it ADA compliant and more for commercial use.
- A lot of improvements need to be made for this property to meet the criteria for being a commercial property at this location.

Board Member Shipton asked what kind of recommendations are being made for this property, finding of violation. Inspector Moore replied we would need to find in violation first.

Board Member Luber asked if this has been discussed with our City Planner to get an idea on how this should look. Inspector Moore replied yes, we meet back on September 20.

Board Member Luber asked was the client involved in the discussion. Inspector Moore replied yes, I was there along with him, his engineer and the City Planner. During this meeting Inspector Moore asked the client if the cost is prohibited what is his plan B. The client indicated he could probably pay for it.

Board Member Luber asked where did you leave the conversation at the end of the meeting. Inspector Moore replied to make sure they stay in communication with the Planning and Zoning Department since Site Plans are their Department. Checked back with Planning and Zoning 30 days later and no communication so started the Code process.

Interim City Attorney Repperger instructed the Board of their options.

- Believe staff has established the violation as stated. Board can find the property in violation and give period of time to cure which will allow the respondent to work through the issues with staff regarding the site plan consideration and issues Mr. Whitehead has raised regarding the exceptions for the submittal. You would want to take those into account as far as a time frame to come into compliance.

- This is the first the City has heard of the grandfather issue. Staff was not aware of this issue being raised.
- The other option is to continue this to the next hearing which gives staff time to evaluate the grandfathering issue with the respondent. Those are your options. Find in violation and give time for those issues to be worked out or continue to the next hearing.

Board Member Luber asked what the property was used for back in 2012. Mr. Whitehead replied a car lot.

Board Member Luber stated you say it has been a car lot the whole time. Mr. Whitehead replied yes.

Board Member Luber stated people are just now noticing cars after eight (8) years. Mr. Whitehead replied there are more cars now than there has been in the past.

Board Member Shipton stated his main concern is between 2012 and 2014 when they were annexed into the City who dropped the ball of transferring the title to the City of West Melbourne. Why didn't the owner come to City Hall and let them know he was annexed and here are my licenses.

Mr. Whitehead asked to submit evidence for Licenses dated from April 26, 2012 thru 2016.

Board Member Shipton asked who issued the licenses. Mr. Whitehead replied The Department of Highway Safety and Motor Vehicles.

Building Official Tom Forbes stated these are not licenses they are the Business Tax Receipts. All the City has done is collect a tax, they have not approved the usage on the site.

Interim City Attorney Repperger asked the Board to allow the Respondent's Representative to submit the required documents.

Mr. Whitehead asked to also submit an invoice for one of the violations for non-payment of Business Tax Receipt. There was an attempt to pay this, however the payment was rejected around September 20, 2022.

Inspector Moore stated one of the violations was the fact there is no current Business Tax Receipt. Director Fischer did tell the business owner it would not be approved due to no site plan.

Mr. Whitehead stated again this should be a non-conforming structure in used pursuant to Section 98.35

Vice Chair Michelson asked if it was annexed in 2014 and his desire was not to be in West Melbourne couldn't he have gone through a procedure since it was not intended to be annexed with the Cumberland Farms property.

Chair Gibbs asked if the property was in the County prior to being annexed into the City. Building Official Forbes replied we do not know and would have to look it up. Based on the location, he would say yes. Cumberland Farms was annexed with the site plan and why this property was annexed. He could not tell the Board.

Board Member McGibany asked when properties are annexed into the City of West Melbourne isn't there a process where it is explained to the owners these are the City's rules and you need to comply with. Building Official Forbes replied probably during the process of annexation with the Planning Department, not Building Department.

Board Member McGibany stated so they should have been made aware of it. Building Official Forbes replied at some point during the annexation.

Inspector Moore recommended finding the violations.

Vice Chair Michelson moved to find the violations. Board Member Palardy seconded, motion carried 5-0.

Inspector Moore recommends granting 30 days to remove vehicles then \$100/a day thereafter if not in compliance.

Vice Chair Michelson moved to grant 30 days to remove vehicles then \$100/a day thereafter if not in compliance. Board Member Palardy seconded, motion carried 5-0.

Case No. 2022-0218
Violation of Section 27-7. – Requirements for collection set out
Violation of Section 302.1. – Sanitation

Code Enforcement Inspector Camille Moore presented Case No. 22-0218 for property located at 748 John Carroll Lane and owned by Josephine Santangelo Estate, et al.

Inspector Moore haven been sworn in and testified:

11/3/2022 – During re-inspection for a previous dead tree determined two other trees were dead; trash cans stored in front of garage door. Requested Notice of Violation and Summons per Building Official Thomas Forbes.

11/4/2022 – Mailed Notice of Violation and Summons.

11/16/2022 – Re-inspected and photographed trash cans in front of garage and dead trees remained.

Inspector Moore recommends finding the violations.

Board Member Shipton moved to find the violations. Board Member Luber seconded, motion carried 5-0.

Inspector Moore recommends granting 14 days to come into compliance regarding trash cans then \$25/a day thereafter if not in compliance. Granting 30 days to come into compliance regarding dead trees then \$100/a day thereafter if not in compliance.

Board Member Luber moved to grant 14 days to come into compliance regarding trash cans then \$25/a day thereafter if not in compliance. Granting 30 days to come into compliance regarding the dead trees then \$100/a day thereafter if not in compliance. Board Member Shipton seconded, motion carried 5-0.

Case No. 2022-0219

Violation of Section 2-93. – Repeat Violation

Violation of Section 18-178. – Work starting before permit issuance

Violation of Section 18-211. – Site Plan

Code Enforcement Inspector Camille Moore presented Case No. 22-0219 for property located at 9075 Ellis Road and owned by Madison Holdings of Brevard LLC., et al.

Inspector Moore testified this case is tabled due to conflict of interest.

**** Building Official Tom Forbes requested to add one item to the Agenda.**

Case No. 2021-0095 – 1380 W New Haven Ave.

- This case was brought to the Board last month requesting a reduction in fines
- Septic system properly removed and inspected
- Have received the permit and inspection report from the County Health Department as required
- Received a check from the property owner in the amount of \$5,250. Five Thousand for the Septic fine plus \$250 from the roof.
- Requesting motion to have liens released

Board Member Luber moved to release lien on 1380 W New Haven Avenue due to payment of received funds to the City of West Melbourne. Board Member McGibany second, motion carried 5-0.

**** Inspector Moore asked could December's Code Board meeting be canceled due to Holiday.**

Vice Chair Michelson asked if there is anything pressing we need to address for next month's hearing. Building Official Forbes replied we just gave 30 days to 7629 Coral Drive address and tabled two other cases and do not know if they will be coming back.

Inspector Black stated he was speaking to the engineer who is preparing this site plan and the company they are dealing with indicated at least 45 days out. So, in 30 days they will not have what they need for the site plan.

Board Member Palardy asked how pressing are the other two (2) cases. Building Official Forbes replied it is the Boards discretion as they normally have canceled meetings which are close to the Holiday where we may not have a quorum. It has never been based on the cases. It is the Boards decision based on family gathering, leaving town, etc.

Chair Gibbs asked if we cancel next month's meeting the two (2) cases which were tabled this month would they be notified there will not be a meeting in December. Building Official Forbes replied we will make sure they know there is no meeting next month.

Board Member Luber motioned to cancel December's meeting. Board Member McGibany second, motion had tie vote 3-3. Chair Gibbs, Vice Chair Michelson and Board Member Palardy opposed.

Interim City Attorney Repperger suggested allowing staff if needing to bring items before the Board in December and allowing staff to cancel if they do not need to bring items before the Board.

Board Member Luber motioned if there are cases needing to be handled in December on the 15th we will be notified to show up otherwise December's Code Board meeting will be canceled. Board Member Shipton seconded, motion carried 5-0.

7. ADJOURNMENT

There being no further business, hearing was adjourned at 6:10 pm.

Chair Chris Gibbs or designee

Lisa M Pilsbury
Recording Secretary