

MAYOR
Hal J. Rose

DEPUTY MAYOR
Andrea Young

COUNCIL MEMBERS
Diana Adams
Pat Bentley
John Dittmore
Daniel McDow
Stephen Phrampus



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Tom Forbes, Building Official
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West Melbourne, FL 32904
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CODE ENFORCEMENT BOARD

AGENDA

Thursday, July 21, 2022
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 June 16, 2022 hearing.

5. **SWEARING IN OF THOSE PRESENTING TESTIMONY**
6. **NEW BUSINESS**

- A. Case No. 22-0095 (1930 Dairy Road)
DAIRY INVESTMENTS, LLC, et al.
Violation of Section 98-831. – Use table. (Mobile MRI)
Order finding violations and fines
- B. Case No. 22-0116 (680 Mark Drive)
ELIAS HENSEL, et al.
Violation of Section 26-166. – Certain locations and vehicles prohibited
Order finding violations and fines
- C. Case No. 22-0098 (147 E. Laila Drive)
MCWILLIAMS PROPERTIES, LLC.
Violation of Section 18-451. – Fence permit required
Order finding violations and fines
- D. Case No. 22-0092 (157 E. Laila Drive)
ROBERTA WESTENBARGER, et al.
Violation of Section 18-178. - Work starting before permit issuance
Order finding violations and fines

7. OLD BUSINESS

- E.** Case No. 22-0048 (9075 Ellis Road)
MADISON HOLDINGS OF BREVARD, LLC., et al.
Violation of Section 98-936. – Site plan
Violation of Section 74-53. – General Standards
Extension request

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

June 16, 2022

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chair Chris Gibbs called the meeting to order at 5:31pm and led the Pledge of Allegiance.

2. ROLL CALL

Present: Chair Chris Gibbs, Board Members Robert Luber, James Shipton, Linda Palardy, George Bosch and Linda McGibany.

Absent: Vice Chair Sandra Michelson and Board Member Andrew Jones.

Board Member Palardy moved to excuse Vice Chair Sandra Michelson and Board Member Andrew Jones. Seconded by Board Member Luber motion carried 5-0.

Also present: Building Official Tom Forbes, Code Enforcement Inspectors Roy Black and Camille Moore, City Attorney Morris Richardson, Planning and Economic Development Director Christy Fischer, Building Department employee Doreen Morales and other members of the public.

3. ADOPTION OF THE MINUTES

Board Member Shipton moved to approve the minutes from May 19, 2022. Seconded by Board Member Palardy, motion carried 5-0.

4. SWEARING IN OF THOSE PRESENTING TESTIMONY

Doreen Morales swore in those presenting testimony.

5. NEW BUSINESS

Case No. 2021-0128

Violation of Section 98-1120. – Walls separating residential zoning districts from development in commercial, institutional and industrial zoning districts; alternative landscape buffers

Code Enforcement Inspector Roy Black presented Case No. 2021-0128 for property located at 4355 W. New Haven Avenue and owned by AHIP FL Melbourne Properties, LLC., et al. (Fairfield Inn)

Inspector Black was sworn in and testified:

8/2/21 - Case was entered on CinemaWorld to put up a fence due to complaints from residences in the area

Inspector Black noticed a 12-foot-wide section belonging to Fairfield Inn from the Property Appraiser's website. Inspector Black spoke to the manager at Fairfield and told them they could wait until CinemaWorld finished installing their fence and then tie-in both fences at the same time.

4/28/22 - Fairfield should be able to determine where the fence should be placed and/or replaced by this time. Notice of Violation was sent to Respondents.

5/5/22 - General manager called today to assure me he would have the fence replaced as soon as possible

5/6/22 - Professional Grade Fence called to confirm where the fence needed to be

6/1/22 and 6/14/22- No fence permit has been received

Atif Nabi, Manager of Fairfield Inn, located at 4355 W. New Haven Avenue, was sworn in and testified:

- He is the new manager at Fairfield Inn
- Received the Notice of Violation
- Spoke with Professional Grade Fence and the fence contractors are delayed by three to five weeks
- Other fence companies were able to come and measure
- Signed contract was given to Inspector Black
- Hotel ownership has approved the fence installation but they need to sign the permit and then it will be submitted to the City
- He is committed to resolving this matter and would appreciate no fines

- He wasn't aware CinemaWorld erected the fence as it was discussed they would do it at the same time but they went ahead with installation without notifying Fairfield Inn

Inspector Black recommends finding the violations.

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

Code Enforcement Inspector Black recommends granting 100 days to pull a fence permit and install the fence, if not complied in 100 days a \$100/a day fine thereafter.

Board Member Luber moved to grant 100 days to pull a fence permit and install the fence, if not complied in 100 days a \$100/a day fine thereafter Board Member Bosch seconded, motion carried 5-0.

Case No. 2022-0044

Violation of Section 26-100. Prohibited accumulations of garbage and trash

Violation of Section 27-7. Requirements for collection set out

Violation of Section 18-421. Conditions

Violation of Section 302.1. Sanitation

Code Enforcement Inspector Camille Moore presented Case No. 2022-0044 for property located at 748 John Carroll Lane and owned by Josephine Santangelo Estate, et al.

Inspector Moore was sworn in and testified:

04/12/2022 – Drove by the property and saw trash in driveway (including City cans and personal trash cans); a damaged fence; boarded windows; and a dead tree; a doorhanger was left

04/27/2022 – No change – requested Notice of Violation be sent

05/19/2022 – The damaged fence was torn down and stacked at roadside; everything else was the same

06/02/2022 – No changes; Summons was mailed and posted on the property

Ms. Jeanette Santangelo, 748 John Carroll Lane, was sworn in and testified:

- She stated she will clean up the property and wasn't aware the trash cans weren't allowed in the front
- She purchased the home in 1987 and it's the first time she's had issues with the City
- Trash cans have been moved to the side of the house
- She cannot afford to remove the tree at this time and is willing to work with the City and will take any help offered

- Windows were boarded for hurricanes and she hasn't removed the boards to avoid her grandson and animals from getting hurt as the windows are old and thin
- She is doing the best she can but money is very tight
- Neighbors in the neighborhood also have trash on their property and she feels like she is be targeted
- Fence is now at the curb for pick up and she has called for pick up
- She is requesting time to come into compliance and no fines

Inspector Moore recommends finding the violations.

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

Inspector Moore recommends granting seven days to remove the boards from the windows then \$250/a day thereafter due to life safety issues and seven days to remove trash and debris then \$25/a day thereafter and thirty days to remove the dead tree on the northwest corner of the property then \$50/a day thereafter if not in compliance.

Board Member Luber moved to grant seven days to remove the boards from the windows then \$100/a day thereafter due to life safety issues, seven days to remove trash and debris then \$25/a day thereafter and thirty days to remove the dead tree on the northwest corner of the property, if not in compliance \$100/a day thereafter. Board Member Shipton seconded, motion carried 5-0.

Case No. 2022-0048

Violation of Section 98-936. Site plan

Violation of Section 74-53. General Standards (complied)

Code Enforcement Inspector Camille Moore presented Case No. 2022-0048 for property located at 9075 Ellis Road and owned by Madison Holdings of Brevard, et al.

Inspector Moore was sworn in and testified:

- 04/18/2022 – Initially entered for parking surface and no site plan
- 04/28/2022 – Took photos of crushed rock (weathered over time) partially complied the case but no site plan had been submitted to the City
- 06/08/2022 – No site plan submitted
- Hand- delivered Summons to the office manager
- Inspector Moore explained the photos from the PowerPoint presentation to the Board

Mr. Robert Griffin, 895 Shoshone Lane, was sworn in and testified:

- Mr. Griffin distributed and described photos to the Board

- Trucks are out doing deliveries during the day and return at night
- Trucks are there on the weekends and run all day and all night
- Trucks have refrigeration units and they run all day and night
- There are at least a dozen trucks on the site
- Units are operating when the green light is on and they are not hooked up to a truck
- Two trucks are backed-up to the residential neighborhood only 100' from residential fencing
- Red truck and white car; they drop off their cars and move trucks
- Diesel fumes result from trucks idling
- Cargo storage trailers are directly behind residential homes and are 10-15' from property line
- Coastal Mechanical takes materials out of the trailers and loads them into other trucks; very loud
- Refrigerated cargo trailers are only 100' from the fence and it's very noisy
- Other trucks are 200' feet away but there is more of them and it generates a lot of noise
- Trucks leave at 4/5 am in the morning; there is no quiet time
- Property has become a truck stop
- Described the residential properties in relation to where the trucks are located
- Questioned what is the expectation of quiet time since there is a truck stop being operated on this property
- Property owner received a land clearing permit from the DEP and an air curtain incinerator permit. He had to clear all of the land to bring in the air curtain incinerator and he cleared everything to meet the requirements for the incinerator and did not notify the City of West Melbourne and this is why the land was cleared

Planning and Economic Development Director Christy Fischer, was sworn in and testified:

- Property is zoned as M-2: General Industrial and annexed into the City in 2014 from Brevard County
- Development Agreement (DA) states the uses allowed on the property such as landscape nursery and similar uses, trucks related to business owner and construction equipment from property owner's business
- The uses going on now are transportation terminal/motor freight
- Any changes made to a property need to go through the Zoning Department to check zoning district and if it would require a submission of a site plan
- May need to submit a drawing from a civil engineer and show where they are placing things or developing the land
- Had a meeting with property owner and civil engineer and they are aware of what the City requires; nothing has been received
- The original site plan submitted was for only business owner's uses

- Other uses need to go through a civil engineer. Surfaces must be stabilized
- Also, a new site plan needs to go through the Board of Adjustment and the conditional use process
- Board of Adjustment can make changes to the site plan; under staff recommendations
- Property owner needs to apply for an updated Development Agreement
- New uses require an amendment to the Development Agreement from January 2014 and analysis
- Asphalt millings are not accepted by the civil engineer

Building Official Tom Forbes was sworn in and testified:

- Permit issued was used to clear dead pines, palmettos and Brazilian pepper, and nuisance trees
- Two permits were pulled for the repairs of a fence and construction trailer

City Attorney Richardson explained the process for a site plan submittal to the Board.

Attorney Richardson asked Director Fischer if she was familiar with the Development Agreement (DA) from January 21st, 2014, between the City and Madison Holdings of Brevard, LLC. and does the agreement provide for the owner to use parking for his own equipment and vehicles, on the rock base which existed at the time of the agreement, without a requirement for paving the rock base. Director Fischer responded it does.

Code Inspector Moore showed the aerial photos from January 21, 2014.

Director Fischer pointed out, at the time, the parking was along the east and south perimeter.

Director Fischer stated the trucks are parking too close to setbacks. Refrigerated trucks may need to be 100' from property line. The City may have to look at other jurisdictions for information as to what recommendations the City will give to the Board of Adjustment and the code does not have a timeframe for noise.

Board Member Shipton is concerned for the residents near this site.

Ms. Susan Cervola, 891 Shoshone Lane, was sworn in and testified:

- Her property backs up to the site
- Trucks run all day, nights and weekends
- Cannot go outside due to noise
- Cargo trailers are parked directly behind her fence

- Has witnessed Coastal Mechanical unload ducts and equipment into other trucks and hears men talking and unloading trucks
- Used to be a beautiful area; all trees have been removed

Mr. Darrell Holloway, 863 Potomac Drive, was sworn in and testified:

- Hears trucks running, coming and going at night
- A low frequency compactor ran for weeks and shook the houses to the foundations
- Respondent does things to make a buck and will ask for permission later
- The refrigeration trucks are another example of his business practice of doing things to make a buck and will ask permission later, he does what he wants to see if the City stops him

Mr. Larry Perkins, 893 Shoshone Lane, was sworn in and testified:

- 10 cargo vans are behind his property; there is no buffer but an 8' fence
- Coastal Mechanical loads and unloads trucks and they look into his yard and kitchen window
- He no longer can enjoy the privacy of his property and concurs with all the comments about the noise

Mr. Jack Platt, 175 E. Nasa Blvd, Suite 300, Melbourne, FL 32901, testified:

- He is the attorney for the Respondent
- 05/06/2022 – Had a telephone conference with Attorney Richardson, Director Fischer and Mr. Rob, regarding the Notice of Violation
- 05/06/2022 – Attorney Richardson, Director Fischer and Mr. Rob agreed he would have a follow-up conversation with Mr. Rob regarding a submittal of a new site plan; he could not reach him after two attempts
- Mr. Platt had surgery on his neck and has had complications
- Mr. Platt stated the City had agreed, at the meeting, the case would not be brought to the Board until they had an opportunity to revise everything and as long as progress was being made, 30-60 days was granted
- Mr. Platt reminded the Board this is a site plan violation not a violation for uses on the property; Respondent is doing what is allowed per M-2 zoning
- Development Agreement (DA) lists the uses allowed and what is restricted is for Aircraft Manufacturing, Iron Foundries and Block and Concrete plants; nothing else was excluded in the DA from 2014
- There is no disagreement of violations in M-2 zoning
- Attorney Richardson believes because he is parking non-owned vehicles on the property the site plan needs to be changed
- Site plan attached to DA from 2014 has the property doing exactly what it is doing right now
- The site plan says existing rock base for parking

- Mr. Platt disagrees wholeheartedly with anything stating it must be Respondent's parking or his transportation trucks
- It states for the entire property - existing rock base for parking
- Mr. Platt is asking for a finding of no violation because he believes he is following the site plan from 2014
- Excluded uses must be listed in the DA in 2014
- Mr. Platt requested to the Board to find the Respondent in compliance because he is following the site plan from 2014
- Mr. Platt stated it was no fault of the Respondent the meeting with Mr. Rob did not happen. Mr. Rob apologized for not returning his multiple phone calls and not Respondent's fault he had to have surgery
- Mr. Platt is asking for a finding of no violation because we do not believe we are required to submit a new site plan, there is not a change of anything other than an interpretation by staff and Attorney Richardson that somehow something has changed but nothing is being violated per the DA
- Parking on rock base is permitted pursuant to site plan
- The rock base is outlined and approved in the DA of 2014
- Explained grass will grow through rock base if not driven over
- Mr. Platt stated the Respondent and clearing trees is not before the Board tonight
- What is there today comports with the site plan approved by the City in 2014; there is a driveway and parking lot of rock base
- Requests non-violation because they have a site plan and what they have is exactly what is on the site plan from 2014
- Requests a 60-day timeframe to meet with Mr. Rob; requests leniency on time to get with Mr. Rob and staff to come up with a new site plan

Attorney Richardson stated the land clearing is extensive but the Board is only addressing the site plan tonight.

Board Member Shipton questioned who cleared out all the trees.

Board Member Palardy stated she doesn't see any rock base/stone where all the trees were cleared out.

Attorney Richardson stated they did have a meeting on May 6th with Mr. Platt, Mr. Rob, Respondent and staff. We agreed to not bring the case to the May Code Board hearing. Later in the month of May, Director Fischer stated she had a conversation with Mr. Rob regarding the status of the site plan and he stated he was trying to reach Mr. Platt. He also stated it was indicated to him not to proceed. Director Fischer's understanding is he was told to stand down. Attorney Richardson stated this information is hearsay.

Attorney Richardson stated the Development Agreement (DA) and the attached site plan, terms and provisions are controlling. The DA agreement recites the existing uses and it does state future uses will be allowed in the City's M-2,

General Industrial Zoning District, except for three issues, which are not an issue tonight. The uses which existed at the time were landscape uses, development of the owner's contractor office and the DA states, "As per the attached site plan (see Exhibit C) that accompanied the annexation parking of non-customer equipment and vehicles can continue on the rock base that existed on the site, without a requirement for paving the rock base."

Attorney Richardson stated the owner's vehicles associated with his business, his construction equipment is to be parked on the site and existing rock base. Not other parking, not customer parking just owner's use of it. The DA states "It is agreed that development that occurs after the date of this agreement for the Developer's property, or any portion thereof, shall conform to the West Melbourne Land Development Regulations requirements in effect at the time of approval of any such plans." Further it states, "Nothing stated within this Agreement will be construed to grant or waive on behalf of the City any additional development approvals as defined by the City's Code of Ordinance that may be required in connection with the Applicant's development of the Property."

Attorney Richardson stated not all M-2 uses are created equally. A landscape company and a truck terminal are very different. Respondent needs to apply for a new site plan for a truck terminal. They are not exempt from applying for a new site plan.

Attorney Richardson stated the arrows notated on the site plan are no where near the southern fence line. It is clearly delineated where there is rock base. They do not need to apply for a new site plan if they cease the truck terminal.

Inspector Moore recommends finding the violations.

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

Inspector Moore recommends seven days for the removal of all items, vehicles, equipment, not owned by Madison Holdings of Brevard LLC or Mr. Wadsworth, off the site. Furthermore, all items, vehicles, and equipment owned by Madison Holdings of Brevard LLC or Mr. Wadsworth, shall be moved to the original crushed rock base as notated on the Brevard County Property Appraiser aerial view from 2014, if not restored to 2014 aerials, then \$250/day thereafter until compliance is reached.

Board Member McGibany moved to grant 30 days for the removal of all items, vehicles, and equipment not owned by Madison Holdings of Brevard LLC or Mr. Wadsworth, taken off the site and all items, vehicles, and equipment owned by Madison Holdings of Brevard LLC or Mr. Wadsworth, to be moved to the original crushed rock base as notated on the Brevard County Property Appraiser aerial view from 2014, if not restored to 2014 aerials, then \$250/day thereafter until compliance is reached. Board Member Lubber seconded, motion carried 5-0.

6. ADJOURNMENT

There being no further business, hearing was adjourned at 6:52pm.

Chair Chris Gibbs, or designee

Doreen A. Morales
Recording Secretary