

MAYOR
Hal J. Rose

DEPUTY MAYOR
Andrea Young

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



Building Department
Tom Forbes, Building Official
City Hall
2240 Minton Road
West Melbourne, FL 32904
Phone: (321) 837-7776
Fax: (321) 952-9542
www.westmelbourne.org

CODE ENFORCEMENT BOARD

AGENDA

Thursday, August 18, 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 July 21, 2022 hearing.

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

- A. 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 penalties
- B. Case No. 22-0131 (116 McClain Drive)
DAVID BUTLER, et al.
Violation of Section 2-93 – Repeat Violations
Violation of Section 26-100 – Prohibited accumulation of garbage and trash
Violation of Section 26-102 – Removal of certain growth of grass and weeds
Order finding violations and penalties
- C. Case No. 22-0138 (695 Palm Bay Road)
BENCHMARK PBH LLC., et al.
Violation of Section 58-238 – Materials & substances excluded from public sewers
Violation of Section 58-268 - Conditions
Order finding violations and penalties

- D.** Case No. 22-0139 (855 Palm Bay Road, Unit 101)
THE KAHILT CORPORATION, et al.
Violation of Section 58-238 – Materials & substances excluded from public sewers
Violation of Section 58-268 - Conditions
Order finding violations and penalties
- E.** Case No. 22-0144 (2450 W New Haven Road)
MCDONALDS CORPORATION, et al.
Violation of Section 58-238 – Materials & substances excluded from public sewers
Violation of Section 58-268 - Conditions
Order finding violations and penalties

7. 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.

MAYOR
Hal J. Rose

DEPUTY MAYOR
Andrea Young

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



Building Department
Tom Forbes, Building Official
City Hall
2240 Minton Road
West Melbourne, FL 32904
Phone: (321) 837-7776
Fax: (321) 952-9542
www.westmelbourne.gov

CODE ENFORCEMENT BOARD

MINUTES

July 21, 2022

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

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

2. ROLL CALL

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

Absent: Vice Chair Sandra Michelson

Board Member Palardy moved to excuse Vice Chair Sandra Michelson. 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, City Clerk Cynthia Hanscom, 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 June 16, 2022. Seconded by Board Member Bosch motion carried 5-0.

4. SWEARING IN OF THOSE PRESENTING TESTIMONY

City Attorney Morris Richardson swore in those presenting testimony.

5. NEW BUSINESS

Case No. 2022-0095

Violation of Section 98-831. Use table. (Mobile MRI)

Code Enforcement Inspector Roy Black presented Case No. 2022-0095 for property located at 1930 Dairy Road and owned by Dairy Investments, LLC., et al.

Inspector Black was sworn in and testified:

5/25/22 – He was contacted by Planning and Zoning regarding a Mobile MRI in the rear of the building; which is not allowed in Commercial New Haven Zone (CNH)

5/26/22 – Broader MRI of Brevard County attended a Board of Adjustment meeting and was awarded a conditional use permit for inside the building only

5/27/22 – Spoke with office personnel and was told the tractor pulling the trailer was being repaired and it would be moved as soon as it was repaired

6/7/22 – Trailer still in operation

7/5/22 – Melissa Mesa with Broader MRI left voicemail indicating they received the Notice of Violation and are attempting to find a location to store the Mobile MRI and trailer considering it needs an electrical hook-up

7/21/22 – Trailer still remains

Ms. Melissa Mesa, employee of Broader MRI of Brevard County, located at 1930 Dairy Road was sworn in and testified:

- They have a new lease and location for the Mobile MRI beginning August 1, 2022
- They have a new location for the trailer on Mondays, Thursdays and Fridays. The Mobile MRI will still be there on Tuesdays and Wednesdays

City Attorney Richardson stated on May 26, 2022 the conditional use permit was approved by the Board of Adjustment, but for inside of the building not an external truck. The business had been notified, going back several months, it was not an allowed use.

Ms. Melissa Mesa indicated they did try to move the truck and while on the highway it almost caught fire. They had it towed back to the facility and it took almost two weeks to get the parts to fix the truck. The trailer has to be hooked up to electricity and water. The last step was finding a location for the trailer, which they did. It will be picked up on August 1, 2022.

Board Member Luber asked how many days has there been a violation.

Inspector Black stated since May 26, 2022.

Board Member Luber questioned if patients are being seen in the Mobile MRI.

Ms. Mesa stated they do not see patients because the MRI has been down for a while and it was just repaired. They may see one patient per day.

Inspector Black recommends finding the violations.

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

Inspector Black recommends granting five days to remove the Mobile MRI from the property then \$250/a day thereafter if not in compliance.

Board Member Luber moved to grant five days to remove the Mobile MRI from the property then \$250/a day thereafter if not in compliance. Board Member Shipton seconded, motion carried 5-0.

Case No. 2022-0116

Violation of Section 26-0166. Certain locations and vehicles prohibited

Code Enforcement Inspector Roy Black presented Case No. 2022-0116 for property located at 680 Mark Drive and owned by Elias Hensel, et al.

Inspector Black was sworn in and testified:

5/31/22 – Inspector Black found a trailer, parked on the street, without tires and on cinderblocks and wood. Resident stated it was his trailer. Inspector Black explained the ordinance and let the resident know it was an unsafe condition and was unable to grant fourteen days to comply. Resident stated the tires were being repaired at Fergusons and should be completed by Friday. Inspector Black re-inspected on Thursday and the trailer was gone. The case was complied.

6/21/22 – Inspector Black observed the trailer exactly where it was located on May 31, 2022. He had informed the Respondent the trailer could not be in the street. Technically as the ordinance reads it would not be allowed as it's a twenty-foot-long trailer. If parked in the side yard it would be in the front of the house since he has a south fence, but he also has a garage in front of the house, so technically it would almost be in front of the house and not in the back like it should be. A Notice of Violation was requested and mailed. Resident stated he parked the trailer behind the front of the home. Inspector Black emailed a photograph showing the trailer back on the street. Resident was specifically told he could not park the trailer on the street.

Inspector Black stated since this is a transient offense and could be corrected within minutes he is requesting an order of findings with no time or penalties.

Inspector Black recommends finding the violations.

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

Case No. 2022-0098
Violation of Section 18-451. Fence permit required.

Code Enforcement Inspector Camille Moore presented Case No. 2022-0098 for property located at 147 E. Laila Drive and owned by McWilliams Properties, LLC. et al.

Inspector Moore was sworn in and testified:

5/23/22 – Received phone complaint regarding a bamboo fence which had previously been removed and reinstalled further north and is visible from the roadway

5/27/22 – Inspected, photographed and requested Notice of Violation since this is an ongoing issue. The tenant of the property was told about the fence and he took it down, then the case complied. Received a new complaint the fence has returned

6/6, 6/8 and 6/10/22 – The tenant requested an inspection of the changes made to the fence and it was determined to still be in violation and they were notified by email. A photograph was received from tenant of a fence panel on the ground and was not anchored and could easily be used to lay down or stand up

6/13/22 – Inspector Moore photographed one panel upright in rear yard from the road

7/7/22 – Re-inspected and photographed a panel visible from the road. Also, visible was a boat parked on front lawn

7/20/22 – Re-inspected and photographed a panel visible from East Laila Drive. Summons was emailed due to mailing issues

7/21/22 - Inspector Moore emailed with property owner and tenant and they both indicated the fence had been removed. Inspector Moore was invited, by the tenant to enter the property to see the backyard. There is a bathtub in the backyard, as the tenant likes to bath in the yard. He will be using the panels as a privacy fence for bathing. It was determined to be a privacy screen.

Mr. Dave McWilliams, the Property Owner, who resides at 1980 Muirfield Way SE, Palm Bay, was sworn in and testified:

- Tenant has been there for nine months and the lease ends in three months
- He was made aware of an earlier violation regarding the fence, by the tenant, who indicated he had taken the fence down
- Photographs were sent showing the fence was down
- On July 20, 2022 he received a second notice regarding the fence
- He contacted tenant regarding the fence and informed him the fence is not allowed without a permit

Board Member Luber questioned if he is allowed to have a fence.

Inspector Moore stated this is a permit issue. The property owner needs to apply for a fence permit. The tenant erected the fence without a permit. The property owner is ultimately responsible for the permit and any fines.

Board Member Palardy questioned if the fence is a permanent structure.

Inspector Moore stated this is not a permanent structure.

Board Member Palardy stated the panels are lying down and cannot be rolled up and could become a hazard during hurricane season.

Inspector Moore stated the panels would fold onto itself but does not appear they can completely fold.

Inspector Moore stated, after conferring with the Building Official and the City Attorney, staff is recommending the tenant only erect the privacy screen while bathing and promptly store beneath the eave or overhang of the home or a new violation will occur.

Inspector Moore recommends finding the violations.

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

Board Member Jones stated it must be properly secured so it does not become flying debris.

City Attorney Richardson stated the Board has found the violations. It presently is complied. If the fence is put back up the City can act more quickly. There is no time and penalty as it is complied. There presently is no violation for the lying the fence on the ground. It could become a separate issue if it's not stored properly but this issue is not before the Board tonight.

Case No. 2022-0092

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

Code Enforcement Inspector Camille Moore presented Case No. 2022-0092 for property located at 157 E. Laila Drive and owned by Roberta Westenbarger, et al.

Inspector Moore was sworn in and testified:

Inspector Moore stated due to mailing issues there was no service. The matter is tabled to the August hearing date.

6. OLD BUSINESS

Case No. 2022-0048 (9075 Ellis Road)

Violation of Section 98-936. Site Plan

Violation of Section 74-53. General Standards

Property owner requested being placed on the agenda for July to request an extension.

Inspector Moore was sworn in and testified:

6/16/22 – Code Enforcement Board granted thirty days to move all non-owned property off the site and shift all owned property to the 2014 established crushed rock parking base, per Development Agreement with the City. If not complied within thirty days then a \$250/per day fine would begin on July 18, 2022.

- Presented aerial views showing how the property initially looked on April 28, 2022
- Presented photographs from Brevard County Property Appraiser website from first quarter of 2014 and first quarter of 2015 both aerial views of the property

7/20/22 - Property was re-inspected a majority of equipment had been moved. Photographs were presented and explained to the Board

City Attorney Richardson stated it's the City's position the property is not 100 percent complied but significant efforts have been made. The 2014 aerial view shows they were allowed to do similar activity. City staff has related to Mr. Wadsworth, his Attorney and Engineer, we would request the Board not close the case but keep the it open but stop the fines from running. If the Respondent backslides and brings back any refrigerated trucks or moves any trucks, the clock will begin running on the fines and the Board can then impose all fines retroactive.

Attorney John Frazier, from the law firm Widerman Malek, Attorneys at Law, 1990 W New Haven Ave, Melbourne, FL., who is representing the Respondent, stated there has been substantial compliance within the short timeframe allotted. Respondent previously requested a site plan but the engineer was unresponsive. A new engineer has been hired and they are requesting 120-180 days to bring forth a new site plan. The new site plan will propose new uses for the property. Attorney Frazier stated he agrees with the City Attorney where the case should remain open to make sure Mr. Wadsworth continues to comply with all the requests made by the City. Keeping the case open maintains accountability and if Mr. Wadsworth backslides the City can take appropriate action.

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

- Trailers were moved on July 13, 2022
- Trailers along the fence line and residential neighborhood were moved by Coastal Mechanical not the property owner
- 7/14/22 - Trailers on Ellis Road were moved to the other areas. All activity was done in two days
- Coastal Mechanical's equipment is still in the trailers. This equipment does not belong to Mr. Wadsworth
- Great improvements have been made but still frustrated with the amount of effort
- Granting another 100 to 120 days buys them more time and to please take into consideration what will happen moving forward

Board Member Luber questioned if any of the equipment/trailers are affecting residents with noise and vibration.

Mr. Robert Griffin stated they have complied with the noise but it took three weeks.

City Attorney Richardson stated even though the citation was for lack of site plan and conducting a business without a site plan, I had advised the Board, at that time, a site plan wasn't required if all activity was removed from the site. There has been a large move towards compliance. City can be supportive of leaving the case open and stop running fines unless Mr. Wadsworth backslides. Attorney Richardson recommends the Board not impose a timeframe, as it depends on when the engineer can submit a site plan.

City Attorney Richardson stated he spoke with BSE engineering, Mr. Scott Glaubitz, who believes they can have a site plan within 60 days but the City will need time to process once received and it also must go before the Board of Adjustment.

Attorney Richardson stated the most important thing was to get the nearby residents some relief.

Inspector Moore recommends postponing assessing fines. Violation site has been photographed and documented on July 20, 2022. Any additions to the site or movement from the 2014 “crushed rock base” will begin fine assessment with potential for retroactive to last documented compliance date at \$250/day.

City Attorney Richardson stated if he violates this understanding not only does he pay for everyday he violates but it would stretch all the way back to the documented compliance date of July 20, 2022 and those fines ordered last time would start running from then. I encourage the neighbors, who have long suffered, we encourage them to call if any refrigerated trucks show up again, or if the trailers are moved back to the fence line.

Board Member Palardy questioned City Attorney about the work trucks moved by Coastal and belonging to Coastal, shouldn't their equipment be removed.

City Attorney Richardson stated trucks were moved to the original footprint. If we preserve the status quo footprint and work towards a site plan, maybe a new site plan is not needed. It does not serve anyone, to run the fines when ultimately the activity will be allowed as long as the site plan is done correctly and there is protection put in place for the neighbors.

Board Member Luber motioned to keep status quo and if the Respondent brings back equipment or trucks the fines will become retroactive to July 20, 2022. Board Member Palardy seconded, motion carried 5-0.

7. ADJOURNMENT

There being no further business, hearing was adjourned at 6:14 pm.

Chair Chris Gibbs, or designee

Lisa Pilsbury
Recording Secretary