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CODE ENFORCEMENT BOARD

MINUTES

January 19, 2023

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chair Chris Gibbs called the meeting to order at 5:35 pm and led the Pledge of Allegiance.

2. ROLL CALL

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

Absent: Board Member George Bosch

Board Member Luber moved to excuse Board Member Bosch. Seconded by Board Member Jones motion carried 5-0.

Also present: Building Official Tom Forbes, Code Enforcement Inspectors Roy Black and Camille Moore, Fire Inspector Carla Moore, City Attorney John Cary, Planning Director Christy Fischer, 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 November 17, 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. 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 and owned by Jonathon & Joy Phelps, et al.

Inspector Black was sworn in and testified:

Reminded the Code Board back on November 17, 2022 they were found in violation and granted 10 days to come into compliance, if not in compliance by November 28, 2022 then \$25/ day fine thereafter. Fines began on November 28, 2022.

12/26/2022 – Complied mostly, but fines need to be calculated for 28 days (\$700) and brought to January's Code Board to impose lien.

Inspector Black recommends the Board impose lien of \$700 on said property.

Board Member Luber moved to impose lien. Board Member Jones seconded, motion carried 5-0.

6. NEW BUSINESS

Case No. 2022-0225

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

Code Enforcement Inspector Roy Black presented Case No. 2022-0225 for property located at 2260 Crippen Court owned by The Reserves of Melbourne LLC., et al.

Inspector Black was sworn in and testified:

11/12/2022 – Inspector Black drove by and observed the same offense as before which was complied before Code Board. Requested Notice of Violation to be sent. Indicated this case would go before the Code Board for finding of violation making any future violations with a 5-year period a repeat violation.

11/16/2022 – Mailed Notice of Violation via certified and regular mail to the Property Owner and Occupant per request.

11/29/2022 – Re-inspected and noticed trash still remains but cleanup is ongoing. Emailed management and also received call from management at which time I explained the process of taking the case before the Code Board.

12/3/2022 – Garbage collection area appears to be substantially cleared and compliant. Case will still go to Code Board for finding of violation as this was the second violation.

1/4/2023 – Code Inspector requested Summons. Mailed Summons via certified and regular mail to Property Owner, Occupant and Registered Agent.

Board Member Jones asked is the problem compliance or equipment. Inspector Black replied there is a representative of the property here tonight to speak on this issue.

Ms. Jamie Morse, Community Manager from The Reserves of Melbourne, 2262 Crippen Court, West Melbourne, FL 32904 was sworn in and testified:

- Both violations this year were due to Hurricanes
- We were skipped fourteen (14) days by Waste Management due to Hurricane Ian
- Then skipped another twenty-two (22) days by Waste Management due to Hurricane Nicole
- The complex has a total of 448 apartments with weekly service on Wednesdays which is when both Hurricanes hit
- Started the storm with a full compactor went 14 days and then another 22 days without service
- This should not be an issue going forward as I have contact Waste Management to verify there is no change to our service going forward.
- I have been with this property for four-years and we have never had any issues
- We have had the same compactor and schedule since 2012 with no previous violations
- We feel it was just bad timing due to weather and had requested pick up as soon as possible
- Both violations were met within the timeframe
- We outsourced our trash collection with a third party to make sure it was cleared in the allotted timeframe

Board Member McGibany asked knowing the Hurricane was coming couldn't you have called Waste Management to pick up the trash earlier. Ms. Jamie Morse replied I did call two (2) days prior to each storm and was told by Waste Management they would do their best but might not be able to accommodate us.

Board Member Jones asked is there verification of these facts which can be submitted. Ms. Jamie Morse replied yes.

Inspector Black stated he is not looking to impose fines, just a finding of violation as an incentive so this does not happen again.

Ms. Jamie Morse replied her only concern with this is Mr. Black stated it could be \$500 a day going forward. Board Member Luber stated this would be something the Board would take into consideration. Ms. Jamie Morse stated so I would not have to worry about this. Board Member Luber states this would be used as an example.

City Attorney Cary explained the State Statute allows up to a \$250 a day fine for first violation. Then if there is a repeat violation the Statute allows \$500 a day, which is the maximum amount the Board can impose. Granted the Board can impose any amount less than.

Chair Gibbs asked is the contract with Waste Management. Ms. Jamie Morse replied yes. Chair Gibbs stated so the apartment complex outsources the garbage with Waste Management and you have a contract with them, correct? Ms. Jamie Morse replied correct.

Ms. Jamie Morse submitted and explained photographs the Code Board was viewing.

- The photographs are of our compactor area which is clear 99% of the time when there is not a Hurricane.
- I have copies of the invoices from the third-party company we brought in to clear out the trash within the timeframe allotted.
- We do care and want to uphold the codes.

Board Member Jones indicated the gates look to be intact and secure

Board Member Shipton asked how many apartments are within the complex. Ms. Jamie Morse replied we have four-hundred forty-eight (448) apartments with a 30-yard compactor which holds about 12,000 lbs. of trash and is picked up weekly.

Board Member Shipton asked Inspector Black if he was looking for fines regarding this case based on the pictures or are they now in compliance. Inspector Black replied one reason Waste Management could not pick up as scheduled due to trash all around the compactor.

Ms. Jamie Morse disagreed with Inspector Black's statement.

- I tried contacting Waste Management every week on Monday, Tuesday and Wednesday to verify they were coming out.
- I have a maintenance team on staff every day from 7 am to 6 pm and my office faces the compactor, so I can see when the truck is on property.
- The maintenance team is instructed to clear the front of the compactor area when the Waste Management truck is on property.

Inspector Black indicated there was a repair issue with the compactor which is not a Waste Management compactor but a third-party compactor. So, the compactor was not repaired and the trash piled up which is why Waste Management was not able to pick up.

Inspector Black recommends finding the violations.

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

Case No. 2022-0219

Violation of Section 2-93. – Repeat Violations

Violation of Section 18-211. – Site Plan

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

Code Enforcement Inspector Camille Moore presented Case No. 2022-0219 for property located at 9075 Ellis Road and owned by Madison Holdings of Brevard LLC., et al.

Inspector Moore was sworn in and testified:

11/3/2022 – She received complaint of multiple loads of asphalt millings being deposited on property. She was aware Property Owner was prepared to submit initial new Site Plan (major) and suspected this storage might be in anticipation of beginning construction. Planning and Zoning indicated there must be a Site Plan (minor) for this type of storage. Piles visible on northwest area of property significantly outside of the 2014 footprint Code Enforcement Board indicated for compliance with storing of “equipment”.

11/4/2022 – Inspected and photographed large piles and witnessed a dump truck. Requested Notice of Violation and Summons

11/4/2022 – Notice of Violation and Summons sent via certified and regular mail to Property Owner, Occupant and Registered Agent per request.

11/16/2022 – Re-inspected and photographed; no change. During Code Board pre-meeting there was a conflict and this case needed to be tabled until the next Code Board meeting. Emailed Mr. Wadsworth to let him know.

12/9/2022 – Re-inspected and photographed; no apparent additional asphalt millings since last inspection.

12/13/2022 – Minor Site Plan received by City. Designated most of property as vehicle/equipment/material storage. Failed to address asphalt millings directly.

12/16/2022 – Re-inspected, no obvious change. Planning and Zoning replied with additional comments regarding Site Plan which was submitted on December 13, 2022.

12/20/2022 – Re-inspected and photographed; visible change to asphalt millings since last inspection (movement/removal of a portion of the NE corner).

1/4/2023 – On site with Mr. Wadsworth no change to pile; scheduled re-inspection from road for 1/17/2023. Advised he would receive a Summons for this case only and he/his engineer would need to contact personnel to discuss attendance of Code Board meeting.

1/5/2023 – Summons sent via certified and regular mail to Property Owner, Occupant and Registered Agent for January's Code Board hearing.

1/11/2023 & 1/12/2023 – Emailed with Property Owner regarding status and Code Enforcement Board meeting.

1/17/2023 – Re-inspected and photographed; no change to pile of millings.

1/18/2023 – City advised there has been no activities on behalf of the Property Owner to address any Site Plan deficiencies to date.

Inspector Moore presented photographs explaining the original site plan and the 2014 aerial footprint showing where the truck trailers are stored. The circle area is where the millings are currently being stored. There are several people attending to speak regarding this case.

Mr. Jason Wadsworth, 9075 Ellis Road, West Melbourne, FL 32904 was sworn in and testified:

- BSE is my Engineering Firm which has submitted both the Major and Minor Site Plans.
- Ms. Fischer knows there has been communications with the City
- We feel we have done everything to address this violation as well as addressing the previous violation
- There are two different plans going on at once
- We feel this violation should be voided as we have done everything asked in the original Notice of Violation to be compliant.

Chair Gibbs indicated they have done everything to be compliant but they do not have a permit. So, they started bringing millings in even though they do not have an approved Site Plan. Mr. Jason Wadsworth replied the major site plan addresses future activity which relates to the refrigerated trucks, there has been no trucks parked on the property.

Chair Gibbs indicated we are talking about materials you have brought in. Mr. Jason Wadsworth replied so dirt and asphalt millings have been brought onto the property but none of those were addressed previously which is why the request for a minor site plan.

Board Member Jones asked if the City Attorney could advise the Board on how to proceed. City Attorney Cary replied staff has presented a case which they have determined is a violation. Now, you as the Board need to consider what was sent in the Notice of Violation and if there is a violation or not. This has nothing to do with previous cases, except in an old case you laid out where they were allowed to conduct their business. Before you make your determination, we have other testimonies to hear. The property owner will have an opportunity to respond along with staff. Once all testimonies have been presented you will then decide under the City Code if there has been a violation or not.

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

- When a contractor wants to bring in materials for storage there is a process
- Site plans have been submitted
- Not all comments have been addressed nor taken care of
- I have talked with our Civil Engineer who explained asphalt millings is like putting down something where you can not get water to percolate through
- This is why we do not allow asphalt millings to be used as materials on parking lots. You can use crushed stone and other materials but not asphalt millings.
- One item we talked about in the site plan review and comments we gave on December 16, 2022 is storm water run off and how will it be handled on site.
- There has been no communication other than this week.
- Some things need to occur regarding the millings. If he as a contractor has asphalt millings which he is going to be selling to another this is not prohibited in our Code.
- As a contractor his is allowed to have materials he sells; concrete or landscaping which are fine, they just need to be compliant with our Code. Asphalt millings cannot sit there.
- We are trying to achieve compliance just as we would with any other property.

Ms. Savannah Farley, from BSE Consultants, Inc., 312 S. Harbor City Blvd, Unit 4, Melbourne, FL 32901 was sworn in and testified:

- Submitted two (2) site plans for the property owner. A major site plan and a minor plan to address what is currently going on with the property.

- We have received comments from the City's Planning and Engineering which we are currently working on.
- The process takes time as we need to re-design and then send revised plans back so we get a plan everyone agrees with.

Mr. Robert Griffin, 895 Shoshone Lane, West Melbourne, FL 32904 was sworn in and testified:

- The Code Board passed something in July regarding a status-quo.
- The status-quo is not being maintained
- Major beneficiary of the trailers in question belong to Coastal Mechanical not Mr. Wadsworth. Unclear if there is a relationship benefiting Coastal Mechanical trailers being there. In fact, it was even asked about during the meeting which was decided to leave them.
- Now comes October and we have roll-off dumpsters and porta-potties on property which looks to be a new active business. This is not my definition of status-quo.
- The final motion by Board Member Luber stated keep status-quo and if the respondent brings back equipment or trucks the fines would become retroactive.
- Equipment and trucks have now shown up
- This is just a continuous story of the activity at 9075 Ellis Road.

Mr. Jason Wadsworth replied:

- Seems the concern now is all wrapped around the millings which is a material
- A third of the materials have come off the site as they are using them in other jobs.
- If the minor site plan which was submitted addresses all of it but the Code Board feels to millings should be remove to another location on property they can do it.
- He doesn't feel this part is clear as a minor site plan has been submitted and these millings are not being used for construction of the future development for the major or minor site plan.
- These are like having fill dirt just like Ms. Fischer said

Vice Chair Michelson asked doesn't the site plan come first then the millings.

Director Fischer replied:

- Yes, once again the site plan has not been approved
- There are comments which still need to be addressed.
- The property owner still needs to address how the storm water will flow off those piles.
- The piles need to be pinned in or behind an enclosure

- There are other things which still need to occur
- This is not just moving the piles from one location to another.
- Needs to be compliant with what was said regarding Code related.

Board Member Palardy asked Director Fischer if the minor site plan covers having asphalt stored there. Director Fischer replied it covers the layout as long as the use is ok. We as a City do not allow the use of millings in a parking lot other Cities in Brevard County may allow. The fact he stores the millings there does not mean the use is prohibited. He has the millings there without an approved site plan, proper enclosure and proper storm water run-off. All of which is being done before the approved site plan.

Board Member Jones stated we are looking for violation correct.

Inspector Moore replied correct. We need to find if there is a violation for no site plan then if there is we have a repeat violation. As back in July there was a finding of violation for no site plan.

Chair Gibbs asked Inspector Moore for her recommendation.

Inspector Moore recommends finding the violations.

Board Member Jones moved to find the violations. Board Member Palardy seconded, motion carried 4-1. Board Member Luber opposed.

Inspector Moore recommends removing the millings from said property since there is no site plan and granting 7 days to come into compliance, if not in compliance then \$100/a day fine thereafter.

Board Member Jones stated to clarify the recommendation of 1 week (7 days) to move the millings from said property until said time he has approval. Inspector Moore replied a minor site plan to address how the millings will be stored.

Board Member Jones asked so no fines until the end of a week (7 days) correct? Inspector Moore replied if the millings are not moved within a week (7 days) then the fines would start.

Board Member Luber asked if 1 week (7 days) was enough time as there is a lot of material to move in a short amount of time. Board Member Jones replied a week (7 days) was enough time for a contractor who has legitimate equipment on hand and should be able to complete this. Can the materials be moved to another location on the property? Inspector Moore replied not without the approved site plan. The problem is the presence of the millings without an approved site plan.

Board Member Jones moved to grant 7 days to come into compliance then \$100/a day thereafter if not in compliance. Board Member Palardy seconded, motion carried 4-1. Board Member Lubber opposed.

Building Official Tom Forbes was sworn in and testified:

- Requested to address the Board regarding this ongoing issue with said property and the “status-quo”
- Asked for the intent of the Board since they have moved dumpsters and porta-potties on the site, they have additional storage.
- Does this go along with the status-quo since it is in the portion where they have operated business or is this additional storage which the Board would consider not part of the status-quo

Board Member Jones stated he would need to re-read to understand.

Vice Chair Michelson stated it is not part of the status-quo.

Board Member McGibany stated I believe the refrigerated trucks were the issue last time and it was stated he could not bring back any refrigerated trucks.

Inspector Moore stated the new issue is the presence of the dumpsters and the porta-potties as being a new business which would throw the status-quo out. She feels he is complying as all those dumpsters and porta-potties are all being stored on the original 2014 footprint. As she understood the spirit of what the Board stated and passed there would be no westward migration of equipment and storage. If there was then the Board could retroactively find back to the last date she documented in compliance which was the 20th. She has been going out monthly per Attorney Richardson’s suggestion to maintain the compliance of the footprint. Mr. Wadsworth has done significant work shifting everything eastward and getting it up and off the southern fence, removing the refrigerated trucks. No complaint or deviation other than the dumpsters and porta-potties on the footprint.

Board Member Lubber asked if the dumpsters or porta-potties are used for business or used to store garbage in them. Inspector Moore replied as you can see the bright green ones are the dumpsters which are not filled with garbage as they are empty.

Board Member Lubber asked if they are causing any environmental problems. Inspector Moore replied no, they are just there.

Case No. 2023-0006

Violation of Section 30-5. – Penalty for violation of fire prevention codes

Fire Inspector Carla Moore presented Case No. 2023-0006 for property located at 4260 W New Haven Avenue and owned by Baer’s Furniture Co. Inc., et al.

Fire Inspector Moore was sworn in and testified:

1/6/2023 – Received verbal complaint about rear exit doors being blocked with mattresses and other furniture. Met and toured facility with Visual Coordinator, Pia Grace. Inspector observed at least 9 obstructed emergency exits. Facility was given 24-hours to come into compliance. This is the 13th time this facility has been cited for the same or similar violations relating to obstructed emergency exits. Requesting Notice of Violation and Summons be sent via certified mail.

1/9/2023 – Notice of Violation and Summons sent via certified and regular mail to Property Owner/Registered Agent and Occupant.

1/13/2023 – Re-inspected and requested Notice of Violation to be sent via certified mail.

1/13/2023 – Mailed Notice of Violation via certified and regular mail to Property Owner and registered agent per request.

Fire Inspector Moore recommends finding the violations.

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

Building Official Tom Forbes stated this allows Fire Inspector to attach a repeat violation with a fine if this happens again.

7. ADJOURNMENT

There being no further business, hearing was adjourned at 6:22 pm.