

MAYOR
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DEPUTY MAYOR
Andrea Young

COUNCIL MEMBERS
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Pat Bentley
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CODE ENFORCEMENT BOARD

MINUTES

August 18, 2022

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Vice Chair Sandra Michelson called the meeting to order at 5:31 pm and led the Pledge of Allegiance.

2. ROLL CALL

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

Absent: Chair Chris Gibbs and Board Member George Bosch

Board Member Shipton moved to excuse Chair Chris Gibbs and Board Member George Bosch. Seconded by Board Member Luber motion carried 4-0.

Also present: Council Member Andrea Young, Council Member Diana Adams, Building Official Tom Forbes, Code Enforcement Inspector Camille Moore, City Attorney Morris Richardson, Administrative Support Specialist Lisa Pilsbury, Technician II, Building Permits Doreen Morales and other members of the public.

3. ADOPTION OF THE MINUTES

Board Member Jones moved to approve the minutes from July 21, 2022. Seconded by Board Member McGibany motion carried 5-0.

4. SWEARING IN OF THOSE PRESENTING TESTIMONY

Doreen Morales swore in those presenting testimony.

5. NEW BUSINESS

Case No. 2022-0092

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

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

Inspector Moore was sworn in and testified:

5/20/2022 – Received internet complaint referencing a 6' fence without a permit

5/23/2022 – Photographed and left door hanger regarding height restriction and permit request

6/2, 6/6 and 6/9/2022 – Property Owner advised fence deemed landscaping case closed. Reevaluation of photographs and deemed fence case re-opened. Property Owner requested going to Code Board.

7/6/2022 – No change - requested Notice of Violation and Summons due to ongoing issue.

7/7 and 7/20/2022- Re-inspected and photographed no change

7/21/2022 – Inspector Moore requested moving this case to the August hearing date due to mailing issues

8/8 and 8/17/2022 – Re-inspected and photographed no change

Board Member Linda Palardy stated she needs to recuse herself from this case.

Ms. Roberta Westenbarger and Mr. Bryan DeSarro, the Property Owners, who reside at 157 E Laila Drive, West Melbourne, were sworn in and testified:

- Presented three photographs of neighbor harassing property owners and contractors.
- January 2022 - neighbor left "calling card" on company truck of Four Seasons Windows and Doors who were speaking Portuguese amongst themselves
- Posted a Friendship flag as she's originally from Canada. Couple days later the neighbor put up the same flag but with a big Black "X" through Canada
- Presented one photograph from the back of neighbors' truck illustrating hatred he has towards other countries (i.e. Calvin urinating on the flag of Puerto Rico)
- Presented three videos showing the following:

- Neighbor flipping the bird to the camera which is pointed towards the fence
- Driving across the lawn, narrowly missing his mailbox and straight for the fence
- Threats towards Hispanic roofers on West Laila
- Property Owner does not feel safe walking out front door when neighbor is around
- Asking the Board for an extension to comply as they are waiting on neighbor to move out in October
- Stated it's a small barrier of protection. We come home, neighbor flipping us the bird. Walk the dogs, neighbor calls us names
- Contacted the Police Chief nothing can be done
- Neighbor does this throughout the neighborhood
- Willing to comply just needs the separation as a safety net

Board Member Luber asked who complained about the fence. Ms. Westenbarger stated the neighbor made the complaint and she put the lattice fence up in November of 2021

Mr. DeSarro stated the existing lattice fence was starting to rot and deteriorate so it was replaced.

Board Member Luber asked if they were replacing the existing structure. Mr. DeSarro stated yes

Board Member Shipton asked if the neighbor was complaining about the entire fence or just section at the end. Mr. DeSarro stated he believes the original complaint was fence without a permit.

Inspector Moore stated the violation the fence is too tall to be in front of the house, needs to be four feet and a fence permit is required.

City Attorney Richardson stated the fence has a maximum height of four feet in front of the house.

City Attorney Richardson stated a permit application has been submitted to the Building Department and additional information was requested.

Attorney Richardson asked Building Official Tom Forbes if he has seen the fence and it could become wind born during a storm. Mr. Forbes stated he has seen the fence and it is installed as a fence would typically be installed.

Attorney Richardson stated the Board has a few options to find the violation for installing fence without a permit and give a timeframe to come into compliance. Once the complainant moves, the fence may no longer be needed.

Attorney Richardson suggested tabling it and allow the permit process to run its course and if fence is not removed or a permit is issued by the end of October, the City can bring the case before the Board.

Inspector Moore recommends finding the violation.

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

Inspector Moore recommends granting 90 days to come into compliance.

Board Member Luber moved to grant 90 days to come into compliance. Board Member McGibany seconded, motion carried 5-0.

Case No. 2022-0131

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

Code Enforcement Inspector Camille Moore presented Case No. 2022-0131 for property located at 116 McClain Drive and owned by David Butler, et al.

Inspector Moore stated this case has complied.

Case No. 2022-0138

Violation of Section 58-238. Materials & substances excluded from public sewers

Violation of Section 58-268. Conditions

Code Enforcement Inspector Camille Moore presented Case No. 2022-0138 for property located at 695 Palm Bay Road (Hooters) and owned by Benchmark PBH LLC., et al.

Inspector Moore introduced Mr. Brian Mascher, from Jacobs who was sworn in and testified:

7/6/2022 – Attorney Richardson mailed letters indicating violation(s), with a 30-day time frame to comply and points of contact for assistance

7/26/2022 – Attorney Richardson requested via email, Notice of Violations be hand delivered

7/28 and 7/29/2022 – Code Enforcement Inspector Moore hand delivered Notice of Violations and collected employee signatures. A copy of the City Attorney's letter was included.

Attorney Richardson stated Mr. Masher works for Jacobs who operates the City's Sewer Plant.

Mr. Mascher stated:

- Notice of Violations were sent for record keeping regarding grease traps
- No records of the amount of grease hauled out per code
- As of July 21, 2022, Hooter's has complied

Attorney Richardson stated a number of violations of the City's Fats, Oils and Grease programs, (FOG). Restaurants and food services are required to report the grease trap pumping activity and the waist haulers do this. There is an automated online system where to report these events. Other violations were physical, problems with the grease traps or storage tanks. When you have problems and no violations these materials get into the sanitary sewer system which is a problem for the Sewer Treatment Plant. A lot of notices were sent out, many places came into compliance in the time given and others did not. Some have complied now but did not within the original time given plus a grace period. Some here today may be in compliance so requesting findings of violations with no time or penalty. However, if in the future they do not comply it can be treated as a repeat violation.

Board Member McGibany asked how often do they report. Mr. Mascher stated every three months.

Board Member Luber asked how long were they out of compliance. Mr. Mascher stated for record keeping was this year.

City Attorney Richardson asked if anyone was present to address the Board on behalf of these businesses.

Mr. Eric McCartney, General Manager of Hooters, located at 695 Palm Bay Road was sworn in and testified:

- At this specific location since the end of February, beginning of March
- This is new and fully accepts responsibility
- Dropped the ball regarding the compliance
- Received first letter was forwarded to our Corporate Office who generally handles these types of issues. They have been in contact via email with our Grease Trap providers to get this resolved
- My understanding the software has been a struggle
- I personally tried to log on and report our latest grease pumping, was unable to locate any password information. Then tried to reset password and was unsuccessful
- Tried to have our Grease Trap Company take over and they also had issues getting information uploaded

- Spoke with Brian Mascher over the last week or two and finally got the information completed today
- This will be taken care of moving forward

Board Member McGibany asked if the corporation knew this had to be done and why they did not provide you any information after the other Manager left.

Mr. Eric McCartney stated he is unsure what corporate knew as they are located in Atlanta Georgia and they have quite a few restaurants. He has been the General Manager at Babcock Street in Melbourne and the one on Merritt Island and did not have to log any of this information and seems Codes are different in West Melbourne.

Board Member McGibany asked just for West Melbourne. Mr. Mascher stated this is just West Melbourne.

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

Case No. 2022-0139

Violation of Section 58-238. Materials & substances excluded from public sewers

Violation of Section 58-268. Conditions

Code Enforcement Inspector Camille Moore presented Case No. 2022-0139 for property located at 855 Palm Bay Road, Unit 101 and owned by The Kahilt Corporation, et al.

Inspector Moore introduced Mr. Brian Mascher, from Jacobs who was sworn in and testified:

7/6/2022 – Attorney Richardson mailed letters indicating violation(s), with a 30-day time frame to comply and points of contact for assistance

7/26/2022 – Attorney Richardson requested via email Notice of Violations be hand delivered

7/28 and 7/29/2022 – Code Enforcement Inspector Moore hand delivered Notice of Violations and collected employee signatures. A copy of the City Attorney's letter was included.

Mr. Laslon Li, employee of Little Asia Restaurant, located at 855 Palm Bay Road, Unit 101, was sworn in and testified:

- Indicated he never received an original letter
- Became aware of the grease trap issue when Inspector Moore dropped off the Notice of Violation which was only a few days ago

- Grease trap hauling has been completed on August 2, 2022 and was within the 30 days
- Our understanding was the service hauler would be updating the FOG system
- Called to verify and was told it was done
- Spoke with Brian who could find no record on August 9, 2022
- Created a FOG account per instructions, uploaded the owner part but this is not the proper instructions on how to report the numbers
- Despite us performing the service and hauling the grease away on August 2, 2022. We were unable to record the service on the proper date
- Believes we are in compliant
- Asked the service again if they uploaded/recorded it properly – they had and sent a receipt of the recording from the FOG website
- Deeply apologizes about the grease hauler mishap, this will not happen again
- We usually do not record the FOG's system ourselves, we ask our service haulers to perform this service. Unsure what it was not recorded properly on time.
- Unsure if it was a communication issue or service issue

Attorney Richardson stated since the time these letters went out there had been no reporting activity for months and months, it's fair to say this whole calendar year. Asked Mr. Li if the trap was being pumped regularly and just not being reported. Or did you not know you needed to pump and maintain until you received the letter.

Mr. Li stated the traps are regularly maintained. We did not know we needed to upload the numbers onto the website. An account was created and uploaded the manifest showcasing the service done and was not the correct steps. After asking Brian, who sent me to Mr. Scott, who instructed me on how to follow the correct numbers on the website to update the gallons pumped.

Attorney Richardson asked if Mr. Mascher can confirm. Mr. Mascher stated he is compliant as of today and moving forward he has access to myself and others to help in uploading the requested data.

Attorney Richardson stated when the hauler believed they logged the information. Mr. Li stated the receipt is the second attempt as they believed the first attempt was logged. Mr. Mascher stated there was no evidence either party submitted numbers to record.

Board Member Luber asked if they get receipts when the pumping is done.

Mr. Li stated he has a manifest showing the service was done, gives the condition of the grease trap, any damage, all numbers needed to report manifest on the website

Board Member McGibany stated the businesses know this is the process and are told this is a requirement and to go an entire year without following the policy seems more than a mishap in communication.

Mr. Li stated recording on the system is new to us. We always have our grease traps pumped but was unaware the business owners were responsible to upload the numbers into the FOG program. We did not register an account until we received the violation and given instructions.

Attorney Richardson stated he is correct the grease haulers typically enter the grease hauled. Mr. Mascher stated ultimately it is the restaurants responsibility. The haulers know who participates in this program.

Attorney Richardson stated if the Board wanted and sounds like there was an honest effort to compliance, may have complied and just the electronic part did not work. So, you could not find in violation regardless we are not recommending any fines today because now in compliance. Whether or not you find in violation, no fine now a question of fine violation so it's a repeat or no violation which is in the Boards discretion.

Board Member Luber recommends finding the violations. Board Member McGibany seconded, motion carried 5-0.

Case No. 2022-0144

Violation of Section 58-238. Materials & substances excluded from public sewers

Violation of Section 58-268. Conditions

Code Enforcement Inspector Camille Moore presented Case No. 2022-0144 for property located at 2450 W New Haven Road and owned by McDonald's Corporation, et al.

Inspector Moore introduced Mr. Brian Mascher, from Jacobs who was sworn in and testified:

7/6/2022 – Attorney Richardson mailed letters indicating violation(s), with a 30-day time frame to comply and points of contact for assistance

7/26/2022 – Attorney Richardson requested via email Notice of Violations be hand delivered

7/28 and 7/29/2022 – Code Enforcement Inspector Moore hand delivered Notice of Violations and collected employee signatures. A copy of the City Attorney's letter was included.

Mr. Mascher stated the concrete structure, in the ground, does have a baffle wall missing which needs to be replaced. I believe the representative is in talk with the vendor to fix the baffle wall.

Ms. Nicole Matushin, employee of McDonald's, located at 2450 W New Haven Avenue was sworn in and testified:

- Situation has been rectified and they are now in compliance
- Looking for an extension as it still needs to be inspected

Mr. Mascher stated once the baffle wall is fixed and up to code, call us and Jacobs will come for inspections.

Ms. Matushin stated she will call for inspection.

Attorney Richardson made recommendation to find the violations and on the second motion for time and penalty give 30 days to cure they will need to have inspection and pass within the 30 days then no fines. If they fail to comply within the 30 days a nominal amount per day, say \$25/a day until it's inspected and passed.

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

Attorney Richardson recommends a motion for time and penalty

Board Member Jones moved to grant 30 days for completion of inspection. If not in compliance within in 30 days a \$25/a day fine thereafter. Board Member Luber seconded, motion carried 5-0.

7. ADJOURNMENT

There being no further business, hearing was adjourned at 6:06 pm.