

Code Enforcement Hearing
Minutes
April 03, 2019

Present: D. John Morgeson Jr., Special Magistrate
Debra S. Babb-Nutcher, City Attorney
Officer Carrie Long
Melani Beringer, Deputy City Clerk

1. Call to Order/Rules of Procedure

Special Magistrate D. John Morgeson Jr. called the Code Enforcement Hearing to order at 2:05 p.m. He stated that formal rules of evidence do not apply and fundamental fairness will be afforded to all. After hearing all of the relevant evidence a verbal order will be issued which will be reduced to writing and mailed to all participants. The order of the presentation will begin with the City presenting their evidence of the alleged violation(s) and then the Respondent shall present his case. All witnesses offering testimony or presenting evidence will be required to swear or affirm that the testimony they provide is the truth.

2. Administration of Oath to Defendants/Witnesses

Special Magistrate Morgeson asked that anyone who wished to testify to stand and be sworn in by the Clerk. The Clerk administered the oath.

3. Additions, Deletions, Modifications

The Respondents Attorney, Mr. Stanley Townsend requested that the Magistrate allow Agenda Item C to be presented first. Mr. Townsend stated that his witness was running late

The Magistrate permitted Agenda item 4C to be presented first.

4. Cases

- C. Case # 8-18-8195
Owner Information: Pauletta Arata
Loc. Address: 515 E. Lansdowne Ave.
RE: Findings of Fact Non-Compliance

Code Enforcement Officer Long presented her case: Ms. Long stated that the above mentioned address had been brought before the Magistrate on December 05, 2018. The Special Magistrate found the property to be in noncompliance. A finding of fact was ordered and the property was to be in compliance by February 05, 2019 or a fine of \$250.00 a day would accrue until the property was brought into compliance. Ms. Long advised that the property is still in noncompliance and fees are still accruing.

Recommendation: Staff recommends the Magistrate grant a lien in the amount of \$14,000 to be placed on the property for 56 days of noncompliance and fines to continue to accrue until the property is brought into compliance.

The Magistrate closed the public hearing. Mr. Morgeson ordered that based upon the foregoing findings of fact and conclusion of law, it is hereby ordered that an administrative fine is imposed for 57 days of noncompliance beginning February 6, 2019 through and including April 3, 2019 for a total amount currently owed of \$14,250.00 against the Respondent, and which amount will continue to increase daily until verification of compliance has been established. The Magistrate noted that this order may be recorded in the Public Records of Volusia County and thereafter shall constitute a lien against the following described land on which the violation exists and upon any other real or personal property owned by Respondent.

B. Case # 12-18-8332
New Case
Owner Information: John Brucato
Loc. Address: 203 S. Industrial Dr.
RE: 5-2 (permit required),

Code Enforcement Officer Long presented her case: Ms. Long stated that this property has been found in violation of Orange City Code of Ordinances, Sec. 5-2(FBC 105.1) Permit required for new door, hole cut for portable a/c, new electric, and wood deck. All this work was completed without proper permits and inspections. Ms. Long provided a brief history of the property.

Ms. Long noted that in November 2014 the Respondent was issued violations in regards to storage units and the use of similar modular buildings as structures.

Glenn Pereno, Chief Building Official, stated that if the container is modified, a permit is required to use the container for anything other than storage.

Carol McFarlane, City Planner, stated that City planning refers to the container as a factory built building. She stated that if the "container" is a building, it requires a building permit. If it is a storage container then it would fall under the Land Development Code as a portable on demand storage unit. She noted that storage units are permitted on a property for a period of 15 days.

Ms. McFarlane reported that four storage containers have remained on the property for several years which fall under the non-conforming structures category. However, Section 8.2.4 of the Land Development Code states that any non-conforming structure enlarged, altered or extended in any way loses its non-conforming status.

Ms. McFarlane referred to, and corrected issues on page 26 brought forth in Attorney Townsend's letters and emails.

The Respondent's Attorney, Stanley Townsend, questioned Ms. Long, Carol McFarlane, and Glen Pereno.

Mr. Townsend called forward Alan Edward James, 1045 E Graves Ave., General Contractor, as a witness. Mr. James stated that he is familiar with the permit process for the City. He explained the process needed for a certified general contractor.

Mr. Townsend stated that Mr. James is an expert witness to testify for the Respondent.

Ms. Babb-Natcher objected. She stated that Mr. James is a certified contractor and not a building official. She stated that if Mr. James' testimony is limited to licensed contractors, then she approves. However, if opinion testimony is presented relating to determination of what a building official would analyze during the permitting process, then she objects to Mr. James testimony.

Mr. Townsend replied that Mr. James will testify based on the experienced observed as a general contractor.

The Magistrate stated that Mr. Townsend was able to proceed.

Mr. Townsend provided a photo of the said container as evidence to identify the item in question.

Ms. Babb-Natcher objected unless the person who took the photo was present to testify about the structure. She noted that the structure in the photograph appears to be a different structure than that in Ms. Long's photo of the structure in question.

Mr. Townsend stated that he will only testify that he took the photo.

The Magistrate stated, "So noted."

Mr. Townsend proceeded with the photos and asked Mr. James to describe the details of the pictures. Mr. Townsend asked Mr. James several questions.

Ms. Babb-Natcher crossed examined Mr. James. She asked Mr. James to explain the details of the structure in question.

Mr. Townsend called the Respondent John Brucato, 203 S Industrial Dr., forward. Mr. Townsend asked Mr. Brucato questions regarding to the structure in question.

Ms. Babb-Natcher asked Mr. Brucato why he referred to the trailer as a tractor-trailer, as well as other questions.

Becky Mendez, Development Services Director, referred to a memo from Ms. Mendez to Mr. Townsend dated October 09, 2015. She stated the memo was given to the Magistrate earlier in the meeting by Mr. Townsend.

Ms. Mendez provided a detailed explanation for the elements explained in the memo that was presented by Mr. Townsend.

Mr. Townsend referred to a blue circle on page 61. He asked Ms. Mendez a series of questions referring to permitted uses and trailers on the said property.

Ms. Babb-Natcher called Ms. Long forward. Ms. Long stated that the picture presented by Mr. Townsend was not a picture of the structure in question.

The Magistrate adjourned at 3:58 p.m. and reconvened at 4:04 p.m.

Ms. Long stated that she would like to retract her claim about the photo not being the same. She stated that both photos do in fact display the same structure.

Recommendation: Staff recommends the Magistrate find the property owner in violation of the Orange City Code of Ordinances as cited and order a compliance date by May 2, 2019 or a fine of \$250.00 a day fine will accrue until compliance is met. Compliance can be met by obtaining required permitting and a satisfactory final inspection or removal of structure.

Ms. Babb-Nutcher came forward and delivered her closing statements.

Mr. Townsend came forward and delivered his closing statements.

The Magistrate closed the public hearing. Mr. Morgeson ordered that respondent is in violation of the codes cited and must correct the violation on or before July 1, 2019, by taking the remedial actions as identified in the Notice of Violation. If Respondent fails to timely correct all violations on or before July 1, 2019 a fine of \$250.00 will accrue for each day that any such violation exists after said date. Respondent is further ordered to contact Code Enforcement to verify compliance with this Order as may be necessary hereafter.

Adjournment

There being no further cases to discuss, the hearing was adjourned at 4:17 p.m.