

CITY OF ST. AUGUSTINE, FLORIDA

Code Enforcement, Adjustments and Appeals Board Meeting
November 19, 2019

The Code Enforcement, Adjustments and Appeals Board met in formal session at 3:00 P.M., Tuesday, November 19, 2019, in the Alcazar Room at City Hall. The meeting was called to order by Martha Mickler, Chairman, and the following were present:

1. ROLL CALL

Martha Mickler, Chairman
Stephen Simmons, Vice Chairman
Noel Mahr
CeCe Reigle
Thomas Day
Larry Weeks
William Masson

Staff Present:

John Cary, Esq., Assistant City Attorney
David Birchim, Director, Planning & Building Department
Richard Schauland, Building Official & Code Enforcement Manager
Curtis Boles, Code Enforcement Inspector
Robert van Mierop, Code Enforcement Inspector
Sandra Partin, Administrative Coordinator, Recording

The City staff was sworn in.

2. APPROVAL OF MINUTES
(October 8, 2019)

Mr. Day noted a correction to be made in the Disclosure of Ex-Parte Communications.

MOTION

Mr. Day moved to approve the minutes with noted correction. The motion was seconded by Mr. Masson

and approved by unanimous voice vote.¹

3. DISCLOSURE OF EX-PARTE
COMMUNICATIONS

Mr. Masson stated that he did not have disclosure of ex-parte but did wish to advise that he had an interest with a case that was on that day's agenda and asked if he would need to excuse himself at that time.

¹ Mr. Simmons withheld motion vote of minutes, as he was not present for the October 2019 meeting.

Mr. Cary affirmed that he would need to excuse himself from the hearing of that case and provide the clerk with a signed voting conflict of interest form.

4. VARIANCES/TREE REMOVAL

None.

5. REVIEW OF PREVIOUSLY HEARD CASES

Item 5 (a) 2018-0773

Terence L. Neville
Thomas A. Neville
13 Douglas Avenue
City Code, Chapter 8, Section 8-301
International Property Maintenance
Code, Section 303.1

Mr. van Mierop read the staff report and provided staff recommendation that the Board approve an "Order Closing Case and Imposing a Lien" in the amount of \$54,000.00 for the accrued fines previously set forth by this Board.

Mrs. Mickler added to the record that a copy of an email dated November 18, 2019, from Terry Neville to city staff, had been provided to the Board that day.

Terrence Neville, 13 Douglas Avenue, was present and testified to the following:

- That he had not articulated the situation with the property when he last appeared before this Board.
- He gave a detailed description of the process they had gone through

regarding the property prior to Hurricane.

- That he had re-erected the fence.
- That they were waiting to hear back from Morgan & Morgan.
- That there are not enough funds to correct the violation concerning the pool at that time.

Public comment was opened, however there was no response.

Mr. Cary disclosed that he had received a telephone call earlier that day from Attorney Andrew Jackson explaining that he represented the guardian of the ward, Roselyn Neville, in a filing against Terrence Neville, to obtain the property back. He cautioned the Board about filing the lien prior to the settling of this case.

Ms. Reigle asked for clarification of Mr. Cary's statement.

Mrs. Mickler clarified that the property would be going to court in January and asked if counsel was recommending the Board continue the case until such time as it could be heard by the Courts.

Mr. Cary responded that he was not making any recommendation and was only making the Board aware of the situation.

Mr. Simmons commented that the Board could not make decisions based upon hypotheticals of what may happen down the road.

Mr. Day and Mr. Masson were in agreement with Mr. Simmons. And thanked Mr. Cary for bringing the information to the Board.

MOTION

Mr. Masson moved to close the case and impose a fine in the amount of \$54,000.00 with the St. Johns County Clerk of Court. And further ordered that staff continue to monitor the property and bring it back before this Board should the property not be brought into compliance. The motion was seconded by Mr. Simmons and approved by unanimous voice vote.

Item 5 (b) 2019-0332

**Richard and Beverly Sorrentino
26 Miruela Avenue
City Code, Chapter 25, Section 25-56
Tree removal without a permit.**

Mr. van Mierop read the staff report and provided staff recommendation that the Board find the property to be in violation and impose a fine with the tree replacements required.

Mr. Mahr asked what fine staff was recommending.

Mr. van Mierop stated that he would recommend a fine equivalent to an after-the-fact permit fee.

Beverly Sorrentino, 26 Miruela Avenue, was present and testified to the following:

- That she believed the tree removal company's assessment of the tree, as she inspected the tree and found that the bark was easily falling off the tree.
- She added that she had made comment to the gentleman with the tree company that she believed they needed to have a tree removal permit. The gentleman responded that he was on the phone with the City for the permit. He then left and came back a short time later stating that he had a permit for the removal.
- That she believed he had the permit.

Ms. Riegle asked the respondent if she had solicited the tree company or if they had knocked on her door.

Mrs. Sorrentino responded that they had knocked on her door.

Mr. Simmons asked if she had seen the permit, had she asked if they had insurance to do the work, and for a copy of his business license.

Mr. Mahr asked if the name Josh Shaw of Tree Worx, out of Ormand Beach sounded familiar with her.

Mrs. Sorrentino responded affirmative.

Mr. Day commented that the residents should be aware that they are responsible for their own property.

Mr. Simmons commented that when due diligence is not followed the homeowners are assuming the risk.

Mr. Masson commented that he would be inclined to use the after-the-fact permit fee, as to be consistent with similar cases, and impose a fine in the amount of \$800.00 with replacement requirement. That with the respondent's testimony, there was nothing additional that would make him believe she was culpable, if anything she was not culpable at all, and while he did not like the fine, it was appropriate given the circumstance.

Mr. Simmons expressed that he shared the same opinion as Mr. Masson.

Ms. Reigle asked if the case could be closed after the replacement trees had been planted, rather than before as she had concerned that respondents would not be inclined to replant.

Staff commented that the case would then have to be brought before the board.

Mr. Simmons commented that should the respondent fail to plant replacements; it would be a new violation that would be brought to the Board.

Mr. Day reiterated that property owners are responsible for their property and to do due diligence when hiring contractors.

Mrs. Mickler commented that the citizen's needed to be better informed on the permitting requirements.

Mr. Simmons reiterated that when due diligence was not followed the homeowners are assuming the risk. And hopefully with these enough homeowners get upset and go after these companies.

Mr. Masson added that with testimony received that day, due diligence had been followed, however it would be wise to confirm with the City that the contractor had obtained a permit.

MOTION

Mr. Masson moved to approve an order finding violation and imposing a fine in the amount of \$800.00 with stipulation that two Southern Red Cedar trees be planted on the property. The motion was seconded by Mr. Simmons and approved by unanimous voice vote.

Item 5 (c) 2019-0328

**Sarah Robert
36 Magnolia Avenue
City Code, Chapter 8, Section 8-301
International Property Maintenance
Code, Section(s) 304.2, 304.7 &
304.13
Property Maintenance.**

Mr. van Mierop read the staff report and gave staff recommendation that the Board continue the case for sixty days

to allow for the permitted work to be completed and for additional permits to be issued. Staff will continue to monitor the property as work continued.

Sarah Robert, 69 Magnolia Avenue, was present and testified to the following:

- She closed on the property very excited to renovate a neighboring property.
- After purchasing the property, she found that there were code enforcement fines beginning to run the same day that she closed.
- That she was no longer doing business with the real estate agent, as they did not disclose the fines to her.
- She expressed dissatisfaction with the accruing fines commenting that every dollar that was spent on silly fines took away improvement of the property.

Ms. Reigle informed the respondent that it was the responsibility of the seller's real estate agent to disclose the code enforcement case/fines to she and her agent.

Mr. Mahr stated that the new owner had taken steps to correct the violations since taking ownership. And he believed staff's recommendation was fair in this situation.

Mr. Simmons commented that as in previous cases, fines imposed by this Board stay with the property, and when

a property is sold new owners appeal to have the fines reduced. And while he did not like to see money go toward fines rather than being put into restoring a property, due diligence should be followed.

Ms. Robert injected herself into the Board discussion and was informed that testimony had been closed and that the Board was now in discussion before making their ruling.

Mrs. Mickler asked Mr. Day to read into the record an email that was provided to the Board at the October 8, 2019 meeting.

Mr. Masson agreed with Mr. Simmons comments and expressed that while it was not ideal, he believed and best use of time and resources was for the case to be continued for 60 days to allow the new owner to make the corrections. And added that perhaps the Board could place on the agenda or make recommendation to the City Commission for ways to effectuate change or do something more substantial at a lower level more quickly as matters such as this keeps coming up. But in this case and with the efforts being made by this owner, regardless of the respondent's feeling toward the process, he believed that staff's recommendation was appropriate in this situation. And he explained for the record, that the difference for him in this case versus the similar case heard that day, was that this was a new owner that was taking corrective actions, whereas the prior case was a current owner with

little to no corrections having been made.

Mrs. Mickler was in agreement. And she was appreciative of the corrective actions taken by the new owner.

Mr. Day asked for clarification of the fining and liens on a property when sold.

Mr. Birchim explained that the fines were running as per this Board's previous order, but a fine would not be filed until this board authorized staff to file the lien.

The Board asked for a figure on the accrued daily fine to date.

Mrs. Mickler asked the respondent to come back to the podium.

Mr. Simmons asked the respondent for a timeline in which she would be looking to have the work completed.

Ms. Robert explained that she had a contract and was anticipating the work to be completed by mid to late January.

Mr. Schauland injected that staff was only finding violation with the roof at this time, as she had pulled permits for the other work. And she had testified that the roof would be done within two weeks. So the property would be out of violation within the next two weeks.

MOTION

Mrs. Mickler moved to continue the case for sixty days to allow for the respondent to bring the property into compliance. And further ordered that all fines be suspended. The motion was seconded by Mr. Simmons and approved by unanimous voice vote.

Mrs. Mickler thanked the respondent for her efforts and for attending that day's meeting.

Item 5 (d) 2019-0357

**Michelle A. Ragognetti, Etal
12 Eugene Place
City Code, Chapter 25, Section 25-56
Tree removal without a permit.
(Request to close case/Previously imposed fine satisfied)**

Mr. van Mierop read the staff report and provided staff recommendation that the Board close the case, contingent upon the replanting of replacement tree, as the respondent had satisfied the previously imposed fine. And noted that should the respondent fail to meet the replacement requirement, a new violation would be issued and brought before this Board.

Neither respondent nor representative were present.

Public comment was opened, however there was no response.

MOTION

Mr. Simmons moved to close the case as per staff recommendation that replacement requirements would be met prior to final closing. The motion was seconded by Mr. Day and approved by unanimous voice vote.

Item 5 (e) 2019-0269

Mihai Coserenau, Etal
9 Althea Street

City Code, Chapter 25, Section 25-56
Tree removal without a permit
(Request to close case/Previously imposed fine satisfied)

Mr. van Mierop read the staff report and provided staff recommendation that the Board close the case, contingent upon the replanting of replacement trees, as the respondent had satisfied the previously imposed fine. And noted that should the respondent fail to meet the replacement requirements, a new violation would be issued and brought before this Board.

Neither respondent nor representative were present.

Public comment was opened, however there was no response.

MOTION

Mr. Simmons moved to close the case as per staff recommendation that replacement requirements would be met prior to final closing. The motion was seconded by Ms. Reigle and approved by unanimous voice vote.

Item 5 (f) 2019-0381

Roman Catholic Church
101 San Marco Avenue

City Code, Chapter 22, Section 22-16
(b)(1)(i)
Use of and/or construction in city rights-of-ways

Mr. van Mierop read the staff report and provided staff recommendation that the Board find the property to be in violation and that a fine in the amount of \$250 per day be imposed, and that the fine remain until such time as the property has been brought into compliance.

The Board asked for clarity of the permit obtained, and what staff's feeling was on the respondent completing the work within a reasonable time.

Staff felt confident that the violation would be corrected within 60 days.

Neither respondent nor representative were present.

Public comment was opened, however there was no response.

MOTION

Mr. Simmons moved to Continue the case until the January 14, 2019 meeting. The motion was seconded by Mr. Masson and approved by unanimous voice vote.²

6. REVIEW OF NEW CASES

Item 6 (a) 2019-0398

**Carmine J. Cupo, Trust
28 Grove Avenue
City Code, Chapter 25, Section 25-56
Tree removal without a permit**

Mr. Masson recused himself from the hearing of this case, as the firm he is employed by had been hired in the past as counsel for the respondent in this case.

Mrs. Mickler acknowledge that Mr. Masson removed himself from the meeting room for the hearing of the case.

Mr. van Mierop read the staff report and provided staff recommendation that the property be found in violation and that a fine be imposed with required replacements.

² Mr. Weeks asked for clarification of the recommended fine not being included in the motion. Mr. Birchim explained that the staff report with recommendation was prepared prior to the permit application having been received for relocation of the fence.

Geraldine Cupo, 28 Grove Avenue, was present and testified to the following:

- She was testifying on behalf of her father, owner of the property, explaining that her father was 96 and suffered dementia.
- That she did not give permission to the tree company to remove the tree, only to trim the branches from over the house.
- That she had power of attorney for her father, and paid his bills, and looked after him.

Mr. Birchim explained that staff was conducting inspections prior to Hurricane Dorian, when they happened upon this debris and found that more than 30 percent of the tree had been removed.

Public comment was opened, however there was no response.

MOTION

Mr. Simmons moved to approve an Order Finding Violation and Imposing a Fine in the amount of \$800.00, consistent with the “after-the-fact” tree removal fee schedule, and further ordered that one replacement shade tree be planted on the property. The motion was seconded by Mr. Mahr and approved by unanimous voice vote.

Mr. Masson rejoined the meeting.

7. CITY ATTORNEY ITEMS

None.

8. OTHER BUSINESS

None.

**9. REVIEW OF CONFLICT
STATEMENTS FROM PREVIOUS
MEETING**

None.

10. ADJOURNMENT

Meeting was adjourned at 4:42 P.M.

Martha Mickler, Chairperson

Sandra Partin, Administrative
Coordinator