

CITY OF ST. AUGUSTINE, FLORIDA

Code Enforcement, Adjustments and Appeals Board Meeting
September 10, 2019

The Code Enforcement, Adjustments and Appeals Board met in formal session at 3:00 P.M., Tuesday, September 10, 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
CeCe Reigle
Thomas Day
Larry Weeks
William Masson
Noel Mahr - Absent

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
(August 13, 2019)**

MOTION

Mr. Day moved to approve the minutes as presented. The motion was seconded by Mr. Simmons and approved by unanimous voice vote.

**3. DISCLOSURE OF EX-PARTE
COMMUNICATIONS**

None.

**4. PUBLIC COMMENT FOR ITEMS
NOT ON THE AGENDA**

None.

5. VARIANCES/TREE REMOVAL

Item 5 (a) 2019-0332

Richard and Beverly Sorrentino
26 Miruela Avenue
Removal of a 20" Southern Red
Cedar tree
City Code Chapter 25, Section 25-56

Mr. van Mierop reported the following:

- On July 5, 2019, an application for tree removal was submitted by Josh Shaw, of Tree Worx tree company, working out of Ormond Beach. The application was for the removal of a Cedar tree that according to Tree Worx, was measured at 20" in diameter. The application described the tree as "rotting, hollow, hole in the trunk". Included with the application were photographs that show the tree which appeared to be a healthy Southern Red Cedar. The application was submitted late in the afternoon on that date, which was a Friday.
 - On July 9, 2019, he visited the site to do an inspection of tree, only to find that it had already been removed. He spoke with one of the homeowners, Beverly Sorrentino, who advised that Tree Worx had removed the tree on Friday, July 5, 2019, and that the representative of Tree Worx told her that a permit for removal was in place.
 - There was no report from either a Certified Arborist or a Florida Licensed Landscape Architect.
 - The tree was a 20" diameter, Southern Red Cedar tree that would have not been approved for removal due to it's size. The remaining stump was measured and photographed, and it showed no signs of being hollow or rotten. There was no other tree debris present as it had all been removed.
 - On August 21, 2019, an "Official Notice of Violation" was sent to the respondent via Certified Mail.
 - On August 27, an "Official Notice of Hearing" was sent to the respondent via Certified Mail.
 - On August 28, 2019, a "Posting Affidavit" of that days Hearing, was posted at the property and with the City Clerk's Office.
 - He presented photos that had been submitted with the permit application, and of the stump after the tree had been removed.
 - The Respondent had stated to him that the tree company was going door to door in the neighborhood.
 - He had contacted the tree company to encourage them to attend the meeting, but there was no response.
 - He added that the Respondent wanted to attend that days meeting, however, was unable to attend due to personal issues. She contacted the City and provided an email with her testimony in the hope that it would be considered by the Board. He then read the email into the record.
- Mr. Simmons asked for clarification of the process regarding date application was received, and time frame in which the permit would be reviewed by staff. And he asked if the City had knowledge of this tree company.
- Mr. van Mierop explained that once an application is received, inspections are

done within 2-3 days after receipt. The City is not familiar with this tree company.

Mr. Day stated that the same tree company had visited his property the same day, soliciting for business before the Hurricane.

Ms. Reigle asked where on the property the tree was located.

Mr. van Mierop stated that the tree was on the north side yard.

Public comment was opened

Stephen Goretskie, 34 Miruela Avenue, commented to the following:

He concurred that as testimony had been received, the tree company was coming door to door soliciting business. The gentlemen with the tree company came, took pictures of the tree, said he would submit it for removal, he came back later that day and said they were clear to remove the tree on Monday.

Public comment was closed.

*A Motion was presented by Mr. Masson to approve an "Order Finding Violation" withholding any fine with stipulation that two replacement Southern Red Cedar trees be planted. The motion was seconded by Mr. Simmons, but did not carry with the following voice vote:
Ayes: Masson, Weeks, Mickler.
Nays: Simmons, Reigle, Day.*

Mr. Simmons commented that a similar case had come before this Board at the previous meeting, and until the City was able to make restrictions against companies coming and circumventing the removal process, cases such as this would appear.

Ms. Reigle commented that there had to be some culpability to regulate the tree cutters.

Mr. Cary advised the Board that the code did not currently allow for action to be taken against the tree companies. The violation is to the homeowner.

Mr. Simmons added that while not to sound contradictory, when an application is made and the process is explained and they contradict that, there must be some action taken.

Ms. Reigle suggested perhaps it was fraud.

Mr. Masson stated that while members of this Board had knowledge of the requirements of application before trees are removed. That they could at some time later put a recommendation for registering of tree companies that could remove trees in the city. However, this could be a criminal matter, where companies are going out and committing fraud.

Mr. Simmons commented that he did not see any difference between someone doing construction without a permit. That work is stopped, and fines are imposed. That if this Board is the

responsible party of enforcement, they cannot be sympathetic to the respondent, and that it would be up to the respondent to take legal action against the tree company.

Mr. Masson explained his reasoning, that with this Board being the steward of the trees, they make certain that replacement trees are planted for the trees lost. That the respondent is not punished, because they don't feel culpable, and how they can adjust this legally in the future.

Ms. Reigle raised the question of whether a cease and desist action could be taken to prevent certain companies from doing business in the city. She expressed concern that with city staff time involved, and lower fines being imposed, it could be viewed as a hand slap.

Mr. Cary commented that he would do some research and report back at the next meeting.

Mrs. Mickler raised concern that the tree company had made application to the city for tree removal and then removed the tree prior to inspection and approval.

Mr. Day commented that it was fraud on the tree companies' part. And he suggested that perhaps the newspaper could do a story on the permitting requirements, and the city could have information on the website.

Mr. Simmons added that this Board was facing several problems, not

withstanding, where they are taking advantage of the elderly.

A second motion was given to continue the case to the October meeting, with unanimous voice vote, but was later retracted as Mr. Simmons would be absent from the next meeting.

MOTION

Mr. Masson moved to continue the case to the November 19, 2019, meeting. The motion was seconded by Mr. Day and approved by unanimous voice vote.

Item 5 (b) 2019-0333

Stephen M. Goretskie/Krystyna Borsewicz
34 Miruela Avenue
Removal of a 37" Live Oak tree
City Code Chapter 25, Section 25-56

Mr. van Mierop reported the following:

- On July 5, 2019, an application for tree removal was submitted by Josh Shaw, of Tree Worx company, working out of Ormond Beach. The application was for removal of a Live Oak tree that according to Tree Worx, was measured at 36" in diameter, and was a "danger to the home". Included with this application were photographs to show the tree which appeared to be a healthy Live Oak. The

application was submitted late in the afternoon on that date, which was a Friday.

- On July 8, 2019, he went to assess the tree for the permit and observed that the tree had already been removed. He then telephoned the homeowner and was told that the tree had been removed on Friday, July 5, 2019, by Tree Worx, and that the representative from Tree Worx claimed to have had a permit to remove the tree. There was no record of a Certified Arborist's or a Florida Licensed Landscape Architect Report recommending the tree's removal.
- The tree was a 36" dbh Live Oak tree that would not have been approved by staff due to its size.
- On July 10, 2019, what was left of the tree stump was measured and photographed with a subcontractor present and in the process of grinding the stump at the request of Tree Worx, who had removed the tree.
- He noted that on January 8, 2018, the City had received a tree removal permit application from Jack Leake, of Affordable Tree Service, requesting removal of this same tree. The application was denied due to size, an Arborist Report was requested for a possible appeal of the denial of the application, which was never filed. Photos of the tree were submitted with the January 8, 2018, application, and

included in this day's packet material.

- On August 21, 2019, an "Official Notice of Violation" was sent to the respondent via Certified Mail.
- On August 27, 2019, an "Official Notice of Hearing" was sent to the respondent via Certified Mail
- On August 28, 2019, a "Posting Affidavit" of this days hearing was placed at the property and with the City Clerk's Office.
- Staff recommended that the Board find the property in violation and that a fine be considered with condition that two replacement shade trees be planted at the subject property.

Mr. Simmons asked for clarification of the tree measurement and reason for requesting removal.

Ms. Reigle asked for clarification of which photos were taken in January 2018.

Mr. Goretskie, 34 Miruela Avenue, testified to the following:

- The tree company had conducted business under false pretense that proper permits had been pulled and he was clear for removal of the tree.
- That he believed the enforcement should go the tree company.

Mr. Simmons asked the respondent if he seen the application for the permit or if he seen a copy of the permit.

Mrs. Mickler asked if he was home at the time.

Ms. Reigle asked the respondent if he could recall the process in January 2018. She was trying to verify that the respondent had knowledge of the requirement for a permit prior to tree removal.

Mr. Goretskie stated that he did have knowledge of the permitting requirement.

Ms. Reigle encouraged Mr. Goretskie to attend the next CEAAB meeting to speak on an item that will be on the agenda.

The respondent stated that he would like to participate in the discussion at next meeting.

Public comment was opened, however there was no response.

Ms. Reigle moved to continue the case to the November meeting, the motion was seconded by Mr. Day, but later rescinded.

MOTION

Mr. Simmons moved to approve an "Order Finding Violation" imposing a fine in the amount of \$800.00 with stipulation that one replacement shade tree be planted. The motion was seconded by Mr. Masson and approved by the following voice vote:

Ayes: Simmons, Masson, Weeks, Day, Mickler.

Nays: Reigle.

Mr. Simmons called the respondent back to the podium to make certain that he understood what decision had been made by this Board.

Mr. Day encouraged the respondent to take legal action against the tree company.

The respondent confirmed that he understood the ruling that day and would be seeking legal action against the tree company.

6. REVIEW OF PREVIOUSLY HEARD CASES

Item 6 (a) 2019-0251

Carol Corbitt

14 Myrtle Avenue

City Code, Chapter 19, Section 19-3

Unsheltered storage of junk and debris

Mr. van Mierop reported the following:

- On August 13, 2019, the CEAAB found this property to be in violation of the above-mentioned City Code, and allowed the respondent until August 19, 2019, to correct the violation or a fine in the amount of \$250 per day would be imposed.
- On August 20, 2019, staff conducted a follow-up inspection

of the property and found that most of the junk and debris had been removed from the front and side porches of the house. Photos taken at that inspection revealed that there was still debris that remained.

- On Monday, September 9, 2019, a re-inspection was conducted and found that the property was in compliance. The respondent stated that the violations had been cleaned up over the past weekend.
- Staff recommended that the case be closed for compliance and that the board impose a fine of \$4,500 for the 18 days of continued violation.

Carol Corbitt, 14 Myrtle Avenue, testified to the following:

- She stated that the Board had given her until Monday the 19th, the inspector had told her he would be back on Tuesday. And he told her on that Tuesday, that she was in compliance. Then he stopped by and told her she needed to be at the hearing but did not tell her she was not in compliance.
- That the only items on the porch was an exercise bicycle, a stuffed animal, and an inoperable television.
- That she had no knowledge prior to this meeting that she would be imposed a fine and that he had found her to be in violation, that she never had a television. That

she put the stuffed animal back out after the storm.

Mr. Simmons asked the respondent if she had an opportunity to view the photos that were date stamped and presented into evidence that day.

Ms. Corbitt stated that she had not.

Mrs. Mickler asked Ms. Corbitt when she corrected the violation.

Ms. Corbitt replied that she had finished the clean-up with exception of the exercise bicycle. That she never had a television and had placed the stuffed animal back out after the Hurricane.

Ms. Reigle asked the respondent if she had ever been before this Board and commented that the Board was looking at photos from June and asked if she had seen the photos.

Ms. Corbitt stated that she had been before this Board many years ago, and that she had only seen photos that were presented on the overhead monitor that day.

Public comment was opened, however there was no response.

MOTION

Mr. Simmons moved to close the case and impose a fine in the amount of \$3,500.00. The motion was seconded by Mr. Masson and approved by unanimous voice vote.

Mrs. Mickler asked if in the days of continued violation, had the days of lost time due to the Hurricane been considered.

Mr. Simmons confirmed it had and was reflected in the fined amount.

Mrs. Mickler asked the respondent whether she understood the Board's action that day. Ms. Corbitt stated that she understood.

7. REVIEW OF NEW CASES

Item 7 (a) 2019-0328
Neil Sexton
36 Magnolia Avenue
Property Maintenance.
City Code, Chapter 8, Section 8-301
International Property Maintenance
Code, Section(s) 304.2, 304.7 &
304.13

Mr. van Mierop reported the following:

- On June 27, 2019, he noticed that the property was in a state of disrepair. A blue tarp on the roof was weather and torn, and it was falling off, exposing roof damage. A previously boarded up window on the north side of the house was open and the plywood had fallen off. A fence panel at the at the northeast corner of the house had fallen to the ground, leaving the property open to trespass.
- On June 28, 2019, during a telephone conversation with the respondent, he advised what

needed to be done in order to bring the property into compliance. The respondent advised that his family was trying to decide what to do with the property.

- On July 10, 2019, a Notice of Violation, allowing 14 days to bring the property into compliance, was sent to the respondent via Certified Mail. This notice was delivered on July 29, 2019.
- August 20, 2019, a follow-up inspection showed that the missing fence panel had been replaced, however the north facing window was still out and not boarded up, and the roof had not been repaired.
- On August 22, 2019, an "Official Notice of Violation" was sent to the respondent via Certified Mail to the property and the address of record. One had been returned and the other was still out for delivery.
- On August 28, 2019, an "Official Notice of Hearing" was sent via Certified Mail to the property and the address of record. One had been returned and the other was still out for delivery.
- On August 28, 2019, the property and the City Clerk's Office was posted with a "Posting Affidavit" of this hearing.
- Staff recommended that the Board find the case in violation, and allow respondent 10 days to start repairs, and that a daily fine be imposed.

- He then produced photos with a brief explanation of each.
- The respondent was present should the Board wish to speak with them.

Mrs. Mickler asked whether Mr. van Mierop had been by the property that week.

Mr. van Mierop confirmed that he had been by the property, and that nothing had changed with the property as of the previous day.

Neil Sexton, 10 Bulow Woods Circle, Flagler Beach, was present and testified to the following:

- He offered material to the Board and explained that he had only found out about the meeting four days prior. (The Board asked the respondent for his testimony first and they would decide if they needed anything further).
- He went through the order in which he received noticing from the City.
- The violations were tended to by himself and a friend. The fence section was repaired, the torn tarp had been replaced with a black tarp, and the opening on the north side had blown in and had been shored up, but unfortunately not to the inspector's satisfaction.
- That he had learned of the notice placed on the property by a text and photo message.

Mr. Simmons advised the respondent that he had received notice as he was present at the meeting. That this Board was here to review evidence and if he requested additional time to correct the violations, the Board would consider that. And he instructed Mr. Sexton to provide staff with the updated contact information prior to leaving that day.

Ms. Reigle asked whether staff had the current address, as it appeared to have changed a few times. And she asked what he planned to accomplish in the next two weeks should this Board allow additional time for the repairs.

Mrs. Mickler asked for confirmation that he would work with city staff.

Mr. Sexton confirmed that he would be repairing the three violations that exist. The fence, the north window, the roof he would need to speak to the building inspector, as he believed the tarp to be enough. And that he would work with the City Staff.

Mr. Cary explained to the Board that the notification requirements had been met, and cited Florida Statutes, Section 162.12. And added that the fact that the respondent had appeared at this hearing showed notice had been received.

MOTION

Mr. Simmons moved to approve an Order Finding Violation allowing respondent until September 25, 2019, to bring the property into

compliance, or a fine in the amount of \$250 per day would be imposed on September 26, 2019, and each day thereafter until the property was brought into compliance. The motion was seconded by Mr. Masson and approved by unanimous voice vote.

8. CITY ATTORNEY ITEMS

Mr. Cary informed the Board that the City Commission had approved the Foreclosure on both 52 Spring Street and 41 Cincinnati Avenue, along with funds necessary for the filing.

9. OTHER BUSINESS

None.

10. REVIEW OF CONFLICT STATEMENTS FROM PREVIOUS MEETING

None.

11. ADJOURNMENT

Meeting was adjourned at 4:37 P.M.

Martha Mickler, Chairperson

Sandra Partin, Administrative
Coordinator