



Code Compliance Board Meeting Minutes

September 7, 2023 at 3:00 p.m.

City Hall, Commission Chambers
401 S. Park Avenue | Winter Park, Florida

1) Call to Order

Chairman Wayne Johnson called the meeting to order at 3:02 p.m.

a. Roll Call

Present: Douglas Bond, Todd Boyer, Steve Heller, Wayne Johnson, Paul Mandelkern

Absent: John Schmalz, Larry (Chris) Tabor

Assistant City Attorney Rick Geller, Fishback Dominick Law Firm

Staff Present: Safety & Code Compliance Division Manager Susanne Porras; Director of Building & Permitting Services Gary Hiatt; Director of Natural Resources and Sustainability, Gloria Eby; Lake Manager, Joseph Cordell; Park Services Manager Josh Nye, Board Secretary Susan Pruchnicki.

2) Swearing in of Witnesses

All witnesses were sworn in by Susan Pruchnicki, Board Secretary

3) Consent Agenda

a. Approve the minutes of regular meeting, July 6, 2023

Mr. Mandelkern and Mr. Johnson made amendments to the draft minutes.

Motion made by Paul Mandelkern to approve the minutes as amended and presented; seconded by Douglas Bond. Motion carried unanimously with a 5-0 vote.

4) Public Comments (for items not on the agenda):

Forest Michael of 358 W Comstock Avenue, Winter Park, FL 32789 made a request for a 10-minute appearance before the Code Board in October, 2023 to appeal a portion of the decision of the Board (CCB#20-60) made at the July 6, 2023 hearing regarding the fascia of his home.

Assistant City Attorney Rick Geller interrupted Mr. Michael to ascertain clarification of Mr. Michael's appearance, noting that appeals to Board Orders must go through the Circuit Court; Mr. Michael's request to the Board would need to be a request for reconsideration. Mr. Johnson confirmed with Mr. Geller that this process is allowed.

Discussion ensued; the Board noted that they are not experts on building and that Mr. Michael should first bring his concern to Mr. Hiatt and the Building Department.

Mr. Hiatt stepped in, noting that Mr. Michael had not yet complied with the order to obtain an active permit or an engineering assessment of the property.

Mr. Mandelkern noted that in July this was a Massey hearing from a 2020 order and the Board found Mr. Michael in violation. Mr. Michael noted there was confusion about the fascia item he wishes reconsideration on.

MOTION: Wayne Johnson made a motion to deny the request until Mr. Michael and Mr. Hiatt have met, and Mr. Hiatt brings the request to Ms. Porras as an agenda item for a future meeting. Douglas Bond seconded. Motion passed unanimously 5-0.

5) Public Hearings

a. New Case CCB#LDC-23-0316 6 Isle of Sicily, Winter Park, FL 32789

Violation Description: Workers under contract to Oliver Dawoud and Rosemary Dawoud removed eight 24" DBH bald cypress trees, five 6" DBH bald cypress trees (replacement trees from 2016 code violation) and one 18" laurel oak tree at 6 Isle of Sicily.

CODES CITED:

Sec. 58-299. - Penalties for tree removal without required permit or for tree damage.

(a) Any protected tree(s) removed without a permit or destroyed or receiving major damage in violation of this division must be replaced and/or compensated at the rate of twice the requirements of Section 58-287.

(b) If no evidence exists on site to calculate the caliper inches of the tree(s) removed, then the tree shall be presumed to be a minimum of a 24-inch protected specimen tree. It is the property owner's responsibility to prove otherwise.

(c) For repeat offenders the city has the right to double restoration requirements or fines (or both) for each subsequent infraction, and in the alternative or in addition to revoke or suspend a contractor's license to do business in the city.

Sec. 58-284. - Tree removal permits.

(b) *Trees requiring tree removal permits.* It shall be unlawful to cut down, destroy, improperly prune, remove, top, or move any protected or replacement tree, or to authorize the cutting down, destruction of, removal of, topping of, moving of, or damage to, any protected or replacement tree within the city, without prior issuance by the city of a tree removal permit approving the act or acts, or a removal authorization by the city, as further described in this division; provided, however, that these requirements do not apply to trees specifically designated as exempt from this division in Section 58-284.

Prior to the case being presented, Mr. Geller presented an email received this date from respondent Oliver Dawoud requesting a 30-day continuance. Mr. Geller also revealed that the city received information from the Florida Fish and Wildlife Commission (FWC) met with Mr. Dawoud and his wife today on the property. This conflicts with his email response.

Board Discussion: Mr. Bond recognized that proper notice was provided. Mr. Mandelkern asked about the notification from FWC. Ms. Eby addressed Mr. Mandelkern's question stating that she was updated by the FWC regional biologist who stated he met with both Mr. and Mrs. Dawoud on their property at 1:13 PM on September 7, 2023, and that Mrs. Dawoud took pictures of him. The biologist stated the Mr. Dawoud was willing to move forward with a permit from FWC at that time. Mr. Mandelkern confirmed that Ms. Eby spoke to the biologist on the phone and had a text confirming the meeting with Mr. and Mrs. Dawoud.

Mr. Johnson noted that the hearing notice was delivered on August 17, 2023. If Mr. Dawoud would have requested the continuance within a few days of the delivery and asked Mr. Geller if the city would have been opposed to the continuance. Mr. Geller stated that if the request was received earlier with a valid reason, and not at the eleventh hour on the day of the hearing, it could have been granted. Mr. Johnson also noted that the respondent could have called in or participated via the ZOOM link provided on the city website. Ms. Porras confirmed that this was correct and Mr. Geller agreed. Mr. Geller stated that the respondent was told if he did not appear that the email sent would be provided to the board for consideration. Mr. Dawoud did not request another option (calling in or via ZOOM) to appear.

Mr. Mandelkern asked Mr. Geller if the board did not agree with the respondent and tabled the request if the city would move forward with presenting the city's case, that the Board would decide based on the evidence presented, and that the respondent's remedy would be to take an appeal to the Circuit Court.

Mr. Geller responded yes, and that the respondent could bring an appeal, but that an argument would be made that any appeals made would be waived because they must be brought to the lower tribunal before taking them to the Circuit Court. Mr. Geller also stated that he saw no violations in due process.

MOTION: Wayne Johnson made a motion to deny the request and proceed with the two cases. Steve Heller seconded. Motion passed unanimously, 5-0.

Before proceeding, Mr. Geller noted that this was an unusual case. The city has requested Mr. Geller to prosecute both cases against Mr. and Mrs. Dawoud per Florida Statute Section 162.07, as the violations were deliberate repeat violations with full knowledge of their illegality and caused irreparable damage to the city. The fines the city asks for are significant, running into the hundreds of thousands of dollars. Florida Statute Section 162.09(1) was quoted regarding the Board imposing fines on repeat violators. He noted the respondents have given no cooperation to the city, and are threatening to sue the city on unrelated matters.

Mr. Geller introduced Officer Susanne Porras, Mr. Josh Nye, and Ms. Gloria Eby as witnesses. Mr. Geller called Officer Porras, Safety & Compliance Division Manager as the first witness. He confirmed her background in code compliance and her familiarity with the cases being presented.

Ms. Porras confirmed a total of four notices were provided. Mr. Geller asked how these were determined. Mr. Porras noted the first violation was sent by Josh Nye, Parks Services Manager, and the second was sent by Joey Cordell, Lakes Manager. These were amended due to the August meeting being rescheduled. Mr. Geller asked if one of them was a Notice of Hearing, Ms. Porras confirmed yes. Three Notices of Violation were issued; one was amended to change the compliance date, giving the respondents additional time to comply. These were served on July, 16, 2023.

Ms. Porras confirmed that the violations in the agenda packet and displayed in the PowerPoint were correct. No permits were issued for any work, including the regrading of the property were issued. All notices were posted on the respondent's property on August 23, 2023. She then confirmed the address and location of the respondent's property on the Isle of Sicily, and presented confirmation of the property ownership from the Orange County Property Appraiser's website.

Mr. Geller inquired if the 2023 violations were the first time the respondents had notices regarding tree destruction and alteration of the shoreline without a permit. Ms. Porras said no. The first notice of violation was issued in 2015.

Mr. Johnson inquired with Officer Porras about the length of time a violation is posted on a property. Ms. Porras noted that it is posted, and a photo showing the date and time of the posting is taken. The length of time it remains is up to the property owner; the city does not remove them.

Mr. Geller then called Josh Nye, Parks Services Manager as the next witness. Mr. Nye identified himself and described his experience with the Urban Forestry Division, and licensing as a Certified Arborist and a Qualified Tree Risk Assessor.

Mr. Nye confirmed the violations found in 2015, and that the respondents were brought before the code board. The respondents were required to obtain an after-the-fact removal permit, fined, and required to replace the trees which were removed. He provided details and photos of the property prior to and after the original violation. He also provided photos and videos of the property in early 2023 to support the current violations issued. Some were taken from the proximity of the Lake, others were taken on property with the permission of the owner. A video from an aerial camera caught the removal of trees in progress. A photo dated May, 2023 also documented the severe pruning (side walling) of bald cypress trees that are on the property of 5 Isle of Sicily. Mr. Nye noted that no pruning of bald cypress trees is permitted by the city.

Mr. Nye explained the calculations used to arrive at the fines (\$150,600) that the city is recommending. These are based on the caliper of the trees removed and other factors, including unpermitted removal fines, repeat offender fines, and irreparable/irreversible fines that apply to the nine large trees.

Mr. Geller asked if the trees were replanted how long it would take to restore the lost canopy; Mr. Nye estimated approximately 40 years. This is the consideration for the irreparable/irreversible damage fines assessed.

Urban Forestry is also recommending that the respondent replant a total of (14) 6" caliper FL #1 grade bald cypress trees to replace the lost canopy. These may not be planted in the water, and must be completed within 30 days. If conditions are not met within that timeframe fines should be accrued at \$500 per day for (5) trees removed in 2015, and \$250 per for the remaining (9) trees.

Mr. Mandelkern requested that Mr. Nye explain his determination of the number of large trees considered irreparable/irreversible damage to protected trees.

Mr. Bond inquired about where a list of protected trees could be found (in the codes).

Mr. Geller asked Mr. Nye if replacement trees were considered protected trees under city code; he responded yes.

Mr. Johnson asked Mr. Nye how the 240" DBH was determined; Mr. Nye noted the calculations available in agenda packet.

Mr. Boyer asked Mr. Nye about lifting (pruning) trees to enhance the view. Mr. Nye noted that pruning permits are not issued, but there is a clause in the code regarding excessive/improper pruning.

Mr. Geller noted to the board that this was the end of the presentation of the Urban Forestry case.

b. New Case CCB-LDC-23-0321 6 Isle of Sicily, Winter Park, FL 32789

Violation: Shoreline was altered, without a permit, by the installation of imported sand and sediments to form a beach. Shoreline vegetation was altered during the installation of imported sand and sediments.

Codes Cited: Chapter 114-6 (Shoreline Protection) of the City of Winter Park Code of Ordinances. The specific, applicable code section(s) and infraction(s) observed are:

Sec. 114-5. – Damaging lakes. Except as otherwise authorized by this Code, it shall be unlawful for any person to dig, damage, destroy, alter, change or deface the banks or shoreline or any part thereof of any of the lakes in or partly within the corporate limits of the city;

Sec. 114-6 (a) – Lakeshore Protection. Removal of aquatic shoreline or waterfront vegetation shall be required to obtain a permit and Sec. 114-6 (a) (7) – Lakeshore Protection. The changing of any shoreline by digging or adding fill, which alters or changes the shoreline or existing topography of the shoreline or waterfront of any water body within the city, shall be prohibited, unless done in accordance with an approved shoreline alteration permit. A permit shall also be required to pump or withdraw sand or any other material from lake bottoms.

Mr. Geller called Gloria Eby, Director, Natural Resources and Sustainability. Ms. Eby provided her education, credentials, and history in the field, and also the responsibilities of the Lakes Division within her department. Mr. Geller confirmed that Ms. Eby is familiar with the respondent's property. Mr. Geller asked if the Lakes Division has occasion to regularly inspect the city lakes. For the Chain of Lakes, every Thursday (weather permitting) they conduct a VAL run (an acronym for the species of eel grass in the lake).

These runs collect floating grass that homeowners have raked from the water and placed on their docks for the city to pick up.

Ms. Eby confirmed that on 1/26 VAL run the bald cypress tree removal was captured on camera by Joey Cordell, Lakes Manager. The city utilizes a barge-style boat for these runs. For inspections, a 15-16' MAKO boat is utilized. Ms. Eby confirmed that all inspections of the property were conducted from state sovereign waters; no trespassing onto the respondent's property was committed.

Ms. Eby confirmed that in addition to the tree removal, unpermitted alterations and improper grading to the shoreline according to best management practices were witnessed, including the installation of sand and sediments.

Mr. Geller asked Ms. Eby if she was aware of a code case from 2015 for this same property. She confirmed that she was not with the city at that time but was aware of the case.

A new permit was issued in 2019 (permits expire on a three-year cycle); this permit was renewed by the respondent and valid until February 28, 2022. There was photo documentation provided indicating a healthy shoreline with diverse native plants and good coverage. Ms. Eby described plants visible in the photos provided.

Through regular weekly inspections in April 2023, the removal of trees and shoreline plants, as well as the presence of imported sand and sediment was documented by photos presented. Multiple photos were also submitted by concerned citizens. No permit for degrading was applied for with the city. These changes can become detrimental to neighboring properties. Sediments can migrate during storms or heavy wave action and be redeposited on another's property. Based on the photos there are signs of water degradation and increased turbidity.

A citation letter was generated after inspections and delivered via email at the request of the homeowner to their attorney in February 8, 2023.

On March 4, 2023, a video presented in the case was received showing loose, non-contained sedimentation adrift in the lake. There is no turbidity barrier or silt fencing present. Further grading was documented on March 9, 2023; no permit was applied for.

On March 28, 2023 a Notice of Violation letter was issued and sent certified mail at the respondents request to a different attorney after no response was received from the attorney previously contacted.

On April 26, 2023 further activity was documented on the property, documented by an FDEP assessment of the property including photographic evidence. Next, documentation of an FWC inspection conducted on the lake was provided to the city, the report from the regional biologist noted the removal of large cypress trees and shoreline vegetation

without active FWC permits. Ms. Eby confirmed that no homeowner may establish a private beach on a Winter Park Lake.

On May 16, 2023, the city was copied on a notice of non-compliance from the FDEP noting an inspection was conducted on the parcel on April 26, 2023. The details of the report (63 pages long) included that the respondent allowed the inspection, and that they and their attorney were present at the time. Approximately 2.058 sq. ft. of jurisdictional wetland was determined to be within the waters of the United States and filled. The volume of sediments installed on the property smothered and buried any remote chance for vegetation to survive. This can create algae blooms in the lake.

Ms. Eby cited recommended fines and actions for the Boards consideration.

Mr. Johnson inquired about the violations issued by the FDEP. Ms. Eby was not aware of the extent of enforcement but has requested information and will report it to the city's code compliance manager. Related to FWC, no permit was obtained. The biologist entered the property today to perform an inspection. Both respondents were present and asked him to identify himself and what he was doing there. Mr. Dawoud was interested in obtaining the permit(s) from FWC, and asking further questions about the removal of eel grass, etc. The biologist stated that he could help them with that. Mrs. Dawoud was taking pictures.

Mr. Johnson confirmed that the respondents would not allow the city on his property, but did allow the State of Florida. Mr. Geller stated for the record that withholding permission for the Urban Forestry division was from 2023 and not prior.

Public Comments:

Jeanne Wall, 2110 Lake Dr, Winter Park, FL 32789. She serves as the Chair for the Lake Killarney Board for the city. She inquired about the hours of staff time and the cost to the city, the cost for the city attorney, and if those costs will be reimbursed to the city. She stated these are residents' dollars that could be used somewhere else in the city.

Ms. Wall noted that recent maintenance was conducted to remove sediment in various lakes and canals, which she believed entailed the venetian canals in the area of the Isle of Sicily. She asked how much that cost, and also how much would it cost to remove the imported and later moved sediment on this property from a lake or canal at a future date. She asked about the cost of treating and algae bloom, again using resident dollars.

She also asked for the names of the contractors that performed the tree removal, altered the shoreline, and installed the new landscape, and if they would be reported to a government agency that oversees their licenses. She stated the situation is an atrocity to the City of Winter Park, hopes that it is made public who did this, and something that can be done to that extent. She thanked the board for considering her points.

Mr. Geller responded to Ms. Wall's question regarding the attorney fees. He is asking the Board to assess against the respondents an amount of reasonable fees, 30 hours of work at \$275 per hour, which is substantially below the average fees, to be apportioned 50-50 for both cases and different motions.

Mr. Johnson inquired if staff knew who performed the work done; they did not. Mr. Geller noted that the respondents threatened to sue the city, so in discovery the firm will try to ascertain this information.

No further public comments were offered.

Mr. Geller submitted closing arguments. He thanked the Board for the length of time given to these matters. He stated the violations presented today strike at the heart of what the citizens of Winter Park cherish most, our lakes and tree canopy, which are the most essential elements to the city's charm and beauty. It is difficult to imagine a more egregious set of willful, knowing, and repeated violations that attack the essence of what the city code is intended to protect.

In assessing fines, please consider the gravity of the harm, actions taken by the violator to correct the violations, and finally, the prior history of violations. In this case the respondents have taken no action to correct any of the violations with respect to the destruction of protected trees, aquatic vegetation, and impermissibly altering the shoreline. These are repeat violations. The gravity and harm were presented in testimony, and viewed in photography and video documentary evidence. It is all compelling, and because the respondents chose not to attend the hearing it is unrefuted.

Maximum fines are being asked for as recommended in the slides presented and by Mr. Nye and Ms. Eby's testimony, to include 30 hours of the attorney's time as permitted by Florida Statute, in the amount of \$8,250.00. Each motion should reflect a cost of \$4,125.00 for each case.

Mr. Johnson opened the floor for Board Discussion on both cases presented.

Ms. Porras noted to Mr. Johnson that edits were submitted to Ms. Porras by City Attorney Rick Geller to the recommended motion for case CCB-LDC-23-0316, and provided the revision to each Board member.

Mr. Bond noted the gravity of the violations. He also asked if the attorney fee could be increased; Mr. Geller clarified that would not be permissible.

Mr. Heller stated that he learned a lot from the presentations and appreciated the hard work of the city staff. He stated that it is an egregious violation, that he spends a lot of time on Lake Maitland, and that he would recommend higher fines if allowable. He also recognized that the respondent has no respect for the city's codes.

Mr. Boyer and Mr. Mandelkern both agreed with Mr. Heller's statements.

Motion: Paul Mandelkern made the following motion in the Urban Forestry case: For Code Compliance Board Case #LDC-23-0316, from the evidence presented today, this Board is issuing an Order finding the Respondents, Oliver Dawoud and Rosemary Dawoud, in violation of:

Chapter 58; Section 58-299. - Penalties for tree removal without required permit or for tree damage, (a), (b), (c) and

Section 58-284. - Tree removal permits. (b) *Trees requiring tree removal permits* of the City of Winter Park Land Development Code.

In addition, the Board finds that, pursuant to chapter 162.09 Florida Statutes and 2-107 of the Winter Park Code, the damage constituted irreparable and irreversible harm to nine protected specimen trees.

The Board finds that Notice was properly served on Respondents via email to their attorneys at their request, and posted on the Subject Property and at City Hall. Notice complied with Florida Statutes section 162.12 and section 2-109 of the City Code.

The respondents are ordered to mitigate their tree destruction violations as follows:

- **Replant five 6" caliper replacement trees required under terms of 2015 violation.**
- **Plant nine 6" caliper replacement trees as mitigation for trees removed in current violation.**
- **Trees must be FL#1-grade bald cypress and may not be planted in the water.**
- **All tree plantings must be complete within 30 days. If conditions are not met within that timeframe, fines should accrue at \$500 per day for each of the five 2015 replacement trees (\$2,500/day) and \$250 per day for each of nine 2023 replacement trees (\$2,250/day) until compliance occurs.**

All fines assessed are based on:

- (1) The gravity of the violations;**
- (2) The failure of Respondents to take any action to correct the violations; and**
- (3) The previous violations committed by Respondents.**

The board assesses fines as follows:

- **Eight 24" DBH bald cypress**
- **Five 6" DBH bald cypress (replacement trees from 2016 code violation)**
- **One 18" laurel oak**
 - **240" DBH removed x \$110 p/inch = \$26,400 (normal compensation)**
 - **\$26,400 x 2 = \$52,800 (unpermitted removal fine)**
 - **\$52,800 x 2 = \$105,600 (repeat offender fine)**
 - **\$5,000 x 9 = \$45,000 (irreparable damage fine for nine large trees)**
 - **\$105,600 + \$45,000 = \$150,600**

In addition, the Board awards the City of Winter Park \$4,125.00, representing 15 hours at \$275.00 per hour for the law firm of Fishback Dominick to prosecute this case under section 2-105(i) of the City Code and Florida Statutes s. 162.07(2).

Motion Seconded by Todd Boyer

Roll Call Vote:

Doug Bond: In favor
Steve Heller: In favor
Wayne Johnson: In favor
Paul Mandelkern: In favor
Todd Boyer: In favor

Motion passed with a unanimous 5-0 vote.

Motion: Wayne Johnson made the following motion in the Lakes Division Case:

From the evidence presented today, this board is issuing an order finding the Respondents, Oliver Dawoud and Rosemary Dawoud for Code Compliance Board Case #LDC-23-0321 in violation of Chapter 114; Section 114-6. – Shoreline Protection; Section 114-5. – Damaging Lakes; Section 114-6. (a) – Lakeshore Protection. Removal of aquatic shoreline or waterfront vegetation and Section 114-6 (a) (7) – Lakeshore Protection of the City of Winter Park Code of Ordinances.

In addition, the Board finds that, pursuant to chapter 162.09 Florida Statutes and 2-107 of the Winter Park Code, the damage constituted irreparable and irreversible harm to the Lakeshore, Lakeshore Protection which includes changing the existing shoreline by adding fill which alters or changes the topography of the shoreline waterfront of any water body within the city and the removal of Aquatic Shoreline or waterfront vegetation.

The Board finds that Notice was properly served on Respondents via email to their attorneys at their request, and posted on the Subject Property and at City Hall. Notice complied with Florida Statutes section 162.12 and section 2-109 of the City Code.

All fines assessed are based on:

- (1) The gravity of the violations;**
- (2) The failure of Respondents to take any action to correct the violations; and**
- (3) The previous violations committed by Respondents.**

The Board assesses fines as follows:

\$250 per day for violations of sediments ($\$250 \times 211 \text{ days of } 2/8/23 = \$52,750$)

\$250 per day for Shoreline Alteration ($\$250 \times 211 = \$52,750$)

\$5,000 for irreversible and irreparable lake damages

Total fine as of 9/7/23 = \$110,500 with fines accruing daily

- **Remediation of the site to include:**
 - **Revegetation with approved City of Winter Park Shoreline Alteration Permit**
 - **Site monitoring and maintenance plan that includes 80% survivability and less than 20% invasive**
 - **Removal of imported sediments utilize best management practices**
 - **Obtain a site permit from City of Winter Park for grading activities**
 - **Obtain all required State (FWC, FDEP) permits and violation fulfillments**

Remediations required by the city shall be completed in 30 days of the issuance of this order. Failure to remediate will result in fines of \$500 per day in addition to the fines above.

In addition, the Board awards the City of Winter Park \$4,125.00, representing 15 hours at \$275.00 per hour for the law firm of Fishback Dominick to prosecute this case under section 2-105(i) of the City Code and Florida Statutes section 162.07(2).

Motion seconded by Todd Boyer.

Motion made by Paul Mandelkern to amend the recommended motion on the prior violation to increase the fines to \$500.00 per day. Mr. Geller and Ms. Eby made last minute changes to the remediation portion of the motion to require sight monitoring and maintenance plan extend for five years (2028), that the plan is detailed, sufficed to the city, and includes a report. Mr. Mandelkern agreed to add this change to his amended motion.

Changes to fines:

\$500 per day for violations of sediments (\$500 x 211 days of 2/8/23 =\$105,500)

\$500 per day for Shoreline Alteration (\$250 x 211 = \$105,500)

\$5,000 for irreversible and irreparable lake damages

Total fine as of 9/7/23 = \$216,000 with fines accruing daily

Amended Motion Seconded by Douglas Bond

Roll Call Vote:

Douglas Bond:	In favor
Steve Heller:	In favor
Wayne Johnson:	No
Paul Mandelkern:	In favor
Todd Boyer:	In favor

The amended motion carried with a 4-1 vote.

c. New case BLDG-23-0008 2661 Via Tuscany, Winter Park, FL 32789

Violations: Building Permit – BLDR-2021-2116 for a fence was rejected at the review stage and no further plans were re-submitted. The permit is now expired and the fence was installed without a permit.

Building Permit - BLDR- 2021-1943 for a pool was issued. They passed all rough inspections but failed the engineering inspection on 03/03/2022. No further inspections were requested ever since. The permit has now expired.

Codes Cited: **Article II. – Building Code; Sec. 22-26. Short Title.; Sec. 22-27.** – Codes Adopted by reference.; **Sec.22-28.-** Amendments to the Florida Building Code.;

Sec.105.4.1 Conditions of a permit, permit term and intent and **Sec. 105.4.1.1** of the City of Winter Park Building Code.

Ms. Porras identified the property owners, Builder & Developers LLC as verified via the OCPA. Notice of Hearing was issued August 16, 2023. Compliance requirements for both permits are to obtain and/or finalize all permit requirements for the fence and the pool structure.

Ms. Porras presented photos of the installed fence and the completed pool structure. Notice of Violation and Notice of Hearing were mailed regular, certified mail, posted on the property and at City Hall in accordance with Florida Statute 162 Due Process requirements; good service was obtained.

Mr. Johnson noted that this property came before the board previously. Ms. Porras confirmed a Massey Hearing a few months back regarding other issues with the construction site, alterations, and other matters. Today's presentation is specifically for the fence and the pool structure.

Mr. Johnson inquired if the property was still under construction or if the Certificate of Occupancy had been obtained. Ms. Porras confirmation that the certificate had not been obtained and that there was still active construction.

Ms. Porras introduced Gary Hiatt, Director of Building and Permitting Services. Mr. Hiatt referred to two sets of printed documents submitted as evidence to the Board Members. The first is referenced as "Fence Permit". It shows the date of application (9/21/21). The next page shows the denial by the Engineering/Stormwater Department stating private fences are not permitted within the public right of way without a formal variance or vacation of right of way and City Engineer approval.

The next page is the Zoning review performed in the Building Department and required setback information on the site plans.

The last page is that plan submitted which shows the fence clearly outside of the property lines. No further response to those comments were received, therefore the permit application has expired and the fence was constructed without the required permit in a wrong location.

The second set of documents are labeled "Last Electrical Inspection". The electric on this permit is associated with the pool. The first page shows that last electrical inspection was completed on February 18, 2022. No further action was taken and the permit expired. The second page indicates and Expired Permit Hold; the permit needs to be renewed. The last page notes the last inspection for the pool was an Engineering inspection, but it was canceled on March 2, 2022. No further action has been requested.

At this time, they need to renew the permit for the pool, for the electrical on the pool, and obtain a permit for the fence.

Mr. Mandelkern asked a question (inaudible on the recording). Mr. Hiatt replied yes.

Mr. Johnson asked if regarding the fence the issue was that it was outside of the property lines, or if there were structural issues. Mr. Hiatt replied that since there was no permit issued and no inspections conducted, the issuance of a permit came first.

Mr. Heller asked if the violator could apply for a variance at this point. Mr. Hiatt responded according to the comments that were generated by Bruce Lomberg at the time, the fence cannot be out there, that private fences are not permitted without a formal variance.

Ms. Porras added that there is a recommended motion in the packet.

Public Comments:

Mr. Fernando Bermudes of Developer and Builder Group, LLC, 218 Wilshire Blvd., Casselberry, FL 32707 spoke on behalf of the respondent. He identified himself as worker for the company, and that the company were the owners of 2661 Via Tuscany, Winter Park, Florida 32789.

He noted that the permit was applied for the fence permit the week of August 23, 2023 (he did not know the exact date). In reference to the pool it, was finished about a week ago and are in the process of applying for a permit to get the final inspection.

Mr. Johnson asked if the respondent received anything regarding the variance application. Mr. Bermudez stated that he has not heard back from his general contractor.

Mr. Heller noted that if the fence is in the public right of way they won't be granted a variance. Mr. Bermudes stated that he spoke with someone in Engineering (couldn't remember her name) who stated that if the hedges were already up to request the variance and she would see what could be done. Builder and Developer Group LLC has not received an answer yet.

Mr. Heller observed that the fence looks great, but... Mr. Bermudez stated it was placed there because the drawing the respondent has showed the property line "way far in". If they placed the fence six feet in it would appear "very off" so they erected the fence and applied for the variance as was suggested to them by the General Contractor.

Mr. Johnson referenced the last time this property was present at code board that the pool was open which was concerning. Mr. Bermudes stated that he wished code compliance would have gone on to the property and taken current pictures of the pool, and that he would provide them to Ms. Porras if needed, but the wall enclosing the pool is basically done, and that they just need to apply for the permit again and apply for the inspection once the permit is granted.

Mr. Mandelkern cited confusion that the pool was built without a permit. Mr. Bermudes stated that he was not sure, that's why they have a general contractor, or why the engineering failed or the inspection canceled. As the property owners they have taken the initiative to finish the house themselves because the general contractor was very slow and the work was very iffy to their standards. We hired a pool company and they finished the existing pool, but they should have submitted for the permit as it was part of their contract. We as owners will talk to them about it.

Mr. Mandelkern confirmed with Mr. Bermudes that Builder & Developers LLC is not the contractor, but the property owner.

Mr. Hiatt stepped in to inform the board that the pool did have a permit, but it expired in February, 2023. It is just a matter of reinstating. Mr. Johnson clarified with Mr. Hiatt that failed inspection in 2022 and the permit expired; the permit was not reinstated then. They may apply for reinstating by providing a valid reason in writing and the Building Department will reinstate it to get the project done.

Motion made by Todd Boyer: From the evidence presented today, I move to find the Respondents, Developer and Builder Group, LLC, Code Compliance Board Case #23-0008, owners of 2661 Via Tuscan, Winter Park, FL 32789 in violation of Article II. – Building Code; Sec. 22-26. Short Title; Sec.22-27. – Codes adopted by reference; Sec. 22-28. – Amendments to the Florida Building Code; Sec. 105.4.1 Conditions of a permit, permit term and intent and Sec. 105.4.1.1 of the City of Winter Park Building Code. The respondents are ordered to submit new permit applications for the fence and pool structure to demonstrate compliance with current regulations and to address the comments made in 2021 within seven days of this hearing date. Failure to comply with this order will result in fines of up to \$250 per day for each day the violation continues. The Respondents are further ordered to contact the Building Department and the Safety and Code Compliance Office and provide documentation of action taken by September 15, 2023.

The motion was seconded by Mr. Heller.

Mr. Mandelkern asked if seven days was realistic as the hearing was held on a Thursday. Mr. Hiatt responded that it was sufficient to renew the permits. If the variance process is allowed, he was not familiar with that process and that seven days might be too strict. Mr. Mandelkern believed that they would have to have a hearing before the Board of Adjustments, which occurs on a monthly basis. Mr. Heller noted that once submitted there is another month lag. Mr. Mandelkern then noted that the recommended motion

for seven days for compliance was only to obtain the permits; it did not say they needed to obtain a variance. Mr. Heller asked that once the permits were issued the fines imposed would stop; Mr. Hiatt confirmed, and noted that hopefully they would continue to pursue this through the process and won't appear before the board again for the same issues. There was no further discussion.

Roll call vote:

Mr. Bond:	In favor
Mr. Boyer:	In favor
Mr. Heller:	In favor
Mr. Johnson:	In favor
Mr. Mandelkern	In favor

Motion carried with a 5-0 vote.

6) Non-Action Items

There were no non-action items

7) Staff Updates

There were no staff updates

8) Board Attorney

Mr. Geller noted that the Florida Federation of Garden Club's appeal was decided. Judge Weiss was appointed to the trio of judges and he got quick justice delivered. The order affirms in part and quashes in part the order of this Board. This order addressed the noise violations from weddings held at their facility.

The judge affirmed the part of the order in finding the noise violations. He quashed the part that requires the garden club to obtain consent of the City Manager to hold future events. The judge did not agree with Mr. Geller's argument that the Code Compliance Board had the statutory authority to impose whatever requirements are necessary to bring about compliance with the code. The judge thought that went too far.

Fortunately, no complaints have been received from any of the neighbors in the past one and one-half years, so we will not appeal the decision.

9) Adjournment

Mr. Mandelkern made a motion to adjourn the meeting at 6:19 p.m.; seconded by Mr. Heller. Motion carried unanimously with a 5-0 vote.

Next meeting is scheduled for October 5, 2023.

Minutes approved by the Board on December 7, 2023.

/s/ Susan Pruchnicki, Board Secretary

DRAFT