



Code Compliance Board Meeting Minutes

January 4, 2024 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 3:01 p.m.

a. Roll Call

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

Absent: Melissa Blaney

Assistant City Attorney Rick Geller, Fishback Dominick Law Firm

Staff Present: Safety & Code Compliance Division Manager Susanne Porras; Safety & Code Compliance Officer Christina Bush, Board Secretary Susan Pruchnicki.

b. Mr. Johnson read the Statement of Purpose

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, December 7, 2023
Minutes were amended to include the votes of Paul Mandelkern

Motion made by Paul Mandelkern to approve the minutes as amended; seconded by Todd Boyer. Motion carried unanimously with a 5-0 vote.

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

There were no comments.

5) Public Hearings

a. New Case **CCB#LDC-23-0300 221 Holt Ave Unit 5, Winter Park, FL 32789**

VIOLATION DESCRIPTION: The Property, a residential dwelling, is currently being rented, used, occupied on a short-term rental website for less than one month which is a violation of the City Code.

CODES CITED: Chapter 58, Section 58-71 (aa) Short-term rental of residential dwellings of the City of Winter Park Land Development Code.

Safety & Code Compliance Division Manager Susanne Porras addressed the Board, informing them that as of two days ago the property owner applied for a conditional use permit with the Planning and Zoning Department. This request will go before the P & Z Board. She requested that with the Board's authorization that this case be tabled for 30 days from now.

Motion:

Wayne Johnson motioned to table the case as requested. Seconded by Douglas Bond.

Mr. Bond: In favor

Mr. Heller: In favor

Mr. Johnson: In favor

Mr. Mandelkern: In favor

Mr. Boyer: In favor

Motion carried with a 5-0 vote.

b. New Case **PM-22-0041 511 Granada Drive, Winter Park, FL 32789**

VIOLATIONS: The Property, a commercial dwelling, has an accumulation of abandoned unsightly articles such as furniture, pieces of lumber and building materials, buckets and other unused equipment stored on the property's yard. Roofing on the property is caved in and is not capable of supporting all nominal loads and resisting all load effects causing unsafe conditions. Dilapidated wood fencing surrounding the property is missing panels and in need of repair. Accumulation of rubbish and garbage on the exterior of the property. The status of the structure is in a deteriorated state, which is a violation of the city code.

CODES CITED: Chapter 22, Sec. 22-176 (adopting the International Property Maintenance Code, 2021 edition), Sec. 22-177 (amending the International Property Maintenance Code), Sec. 202 Nuisance (2) (3) (18) (21), Sec. 302.1 Sanitation and Storage of Materials, Sec. 302.7 Dilapidated Fences, Sec. 302.8 Abandoned and Disabled Motor Vehicles, Sec. 304.1.1(8) Unsafe conditions, and Sec. 308.1 Accumulation of Rubbish.

Safety & Code Compliance Officer Christina Busch introduced herself and identified the property owners as Eric Blaine Emerson Sr and Shara Mae Guillang Emerson of 913 Fairway Dr., Winter Park, FL 32792. as verified by the OCPA. A Notice of Hearing was provided via certified mail on June 29, 2023. An Amended Notice of Hearing was issued on August 15, 2024. A second Amended Notice of Hearing was issued on September 9, 2023. A Third Amended Notice of Hearing was issued on October 19, 2023. A Fourth Amended Notice of Hearing was on November 9, 2023.

Officer Busch proceeded with the presentation of photos taken on December 16, 2022 of disabled vehicles, discarded furniture and articles stored on the property, and a dilapidated ramp, taken during her inspection of the property. She provided additional photos of the conditions on follow up visits on January 23, 2023, February 28, 2023, March 3, 2023, March 27, 2023, May 11, 2023, May 25, 2023, June 12, 2023, June 27, 2023, and July 25, 2023 noting some improvements and an effort to clean up some of the waste, but also documenting the dilapidated condition of the fence. One photo displayed new fence panels that were installed on the other side of the building without a permit. Otherwise conditions were mostly unchanged. Property posted on July 25, 2023.

During the August 11, 2023 follow up inspection Officer Busch found no significant improvements, but discovered the collapsed roof on the back of the building. Officer Busch amended the Notice of Violation to include this.

During the August 16, 2023 follow-up inspection Office Busch found that the disabled vehicles had been removed from the front of the property, the falling fence panel had been propped up, and discarded articles removed. Posted 1st Amended Notice of Hearing.

During the September 7, 2023 follow-up inspection Officer Busch found additional new fence panels had been installed without a permit, and no progress on the collapsed roof.

During the October 11, 2023 follow-up inspection, a new discarded article was visible on the property, but otherwise it looked pretty clean. A photo of the collapsed roof was also taken documenting no progress on repairs.

During the November 7, 2023 follow-up inspection all fence panels on the left side of the property had fallen, exposing discarded items being stored. Another photo indicating the status of the roof.

During the December 12, 2023 follow-up inspection, the disabled vehicles previously moved were back in plain view with "For Sale" signs. The fencing on the left side was still on the ground.

During the December 18, 2023 follow-up inspection, the vehicles "For Sale" remained in plain view. A "for Sale" sign was placed on a RV stored behind the new fencing. Again, a photo of the collapsed roof shows no improvement. Posted 4th Amended Hearing Notice.

During the December 27, 2023 follow-up inspection the "For Sale vehicles remained in the driveway (the sign had been removed from the white vehicle) , the fencing on the left side of the property was still in disrepair, and the roof was still in a deteriorated state.

Mr. Johnson inquired if a permit had been pulled to repair the roof; Officer Busch confirmed that no permit had been applied for.

Mr. Johnson asked Officer Busch if anyone lived in the building; Officer Busch stated it is vacant.

Mr. Johnson asked Building and Permitting Director Gary Hiatt if the building could be habitable with the current state of the roof. Mr. Hiatt stated that he had not been to the site, however, from the photos presented he did not think so. He would have to visit the site to make that determination.

Mr. Boyer confirmed that the Board was considering the fence condition, the disabled vehicles, and the roof in their decision; Officer Busch confirmed this was correct. Mr. Heller repeated the question to Officer Busch.

The Respondent, Eric Blaine Emerson Sr., who resides at 913 Fairway Dr., Winter Park, FL 32792, stepped to the podium. He identified himself as the owner of 511 Granada Dr., Winter Park, FL 32789. Mr. Emerson stated that he has been working with Officer Busch to come into compliance.

He brought to the Board's attention that in the middle of the clean-up he was hampered by the hurricane that came through. This storm caused several 60 – 70 ft. Oak trees on the back of the property to fall, one landed on the building, damaging the roof on the rear of the building. He noted that because the building was only used for storage it was not insured. He has requested assistance from multiple agencies to help. He stated he spent almost \$40,000 just to remove the fallen trees.

Mr. Emerson then stated that he had applied for a temporary power pole but was denied. Power is needed to facilitate building repairs. Mr. Emerson explained to Officer Busch that he needed cooperation to get the issues handled.

In regard to the dilapidated fencing, Mr. Emerson noted that the panels will be removed.

Mr. Emerson stated that if he can get the power pole installed then he can move forward with the roof repair, assuming it is worth doing. The building is 80 years old, and has no real value; only the property.

Mr. Emerson requested time to work with an Engineer to determine the feasibility of repairing the building. Once the Engineer performs a site visit they will determine if it is fiscally responsible to complete repairs or demolish the structure.

Addressing the vehicles, Mr. Emerson stated that basically every vehicle is operational. They are not currently tagged because they aren't being used.

Mr. Emerson did not feel that unsafe conditions exist because the property is not occupied and is private property. As to the storage of materials, the property is zoned "C" (commercial), and Mr. Emerson holds three licenses (GC, Plumbing and A/C Contractor), he feels he is allowed to store materials.

Mr. Emerson noted that all "rubbish" has been removed, and that he is throwing away items that could be repurposed or sold just to comply with the city.

Finally, Mr. Emerson noted the extreme financial hardship he has experienced in getting to the current state of the property, and that he does not have unlimited capital resources to do everything at once.

Mr. Bond inquired if the vans on the property were licensed. MR. Emerson stated the newer ones on the left one is and one isn't (just purchased last month). Some of the others weren't; he uses the wrecked one for parts as he owns two other vans of the same make and model. He is willing to store them on the back of the property vs. getting rid of it.

Mr. Bond inquired about the two cars. Mr. Emerson stated that these vehicles belong to his son. They are fully functional, but the tags have been pulled off of them because he is trying to sell them. Mr. Emerson stated that he has another property where these vehicles could be stored, but he has them at the Granada Dr. address so that they can be seen and sold. The other property is in Kissimmee and remote.

Mr. Bond inquired about needing a general contractor to assess the roof. Mr. Emerson stated he needs an engineering assessment of the damage, and that the Engineer will

assist in permitting. Mr. Bond then asked how long Mr. Emerson anticipated needing to get an Engineer. Mr. Emerson felt that this could be done within 60 days. As a licensed general contractor, he can come up with a plan to determine the feasibility of repairing the roof. He again mentioned the denial of the power pole permit. He also noted that due to the significant amount of water damage to the structure that it would most likely be demolished.

Mr. Johnson asked Mr. Emerson when the power permit was denied. Director of Building and Permitting stepped to the podium, stating the permit was denied in March, 2023. The reason it was denied was because there was no reason for it; a building permit is required in order to get temporary power (one is associated with the other). Mr. Hiatt also stated that the property does pose a danger to the neighboring property; that during a storm there is a possibility of wind-borne debris. Mr. Mandelkern then confirmed with Mr. Hiatt that a building permit was necessary to obtain temporary power.

Mr. Emerson stated that there were issues getting into the building in the area of the collapsed roof, and that he was attempting to get power so that he could see the roof debris to see how much damage was done and where the salvageable part might exist.

Mr. Johnson confirmed with Mr. Emerson that he holds a general contractors license. He then asked Mr. Emerson if the Engineer's assessment is not favorable, how long would it take to demolish the structure. Mr. Emerson noted there were other variables involved, but approximately 30-60 days and would involve pulling a permit. This would also require dealing with the plumbing, terminating the septic system, and a couple of other items (power is already terminated). It would also involve smashing and hauling the debris, and scraping the property. If he gets to that point, approximately 90 days would be required, depending on the permitting process.

Mr. Johnson asked the Board if they had anymore questions for Mr. Emerson. Mr. Emerson then tried to raise a couple of other points to the Board, comparing his property in its current state to an adjacent property being overgrown. He was originally cited for this until it was determined that the overgrowth was not on his property but theirs, yet the other owner has not been cited and the overgrowth continues. He then attempted to present pictures he had taken. Mr. Johnson stopped Mr. Emerson, noting that his photos were not provided from the city in this case.

Mr. Bond asked Mr. Emerson if he were to drive past his property if he would see two cars and two vans for sale. Mr. Emerson confirmed yes.

Mr. Emerson again attempted to show the Board additional pictures of adjacent properties with the same issues as his. Mr. Johnson stopped Mr. Emerson again, noting that the Board is only considering the case as it was presented by Officer Busch. Mr. Emerson acknowledged this, but insisted that his illustration showed that only his property is being held to account when the surrounding properties are in disarray. He continued to offer to the Board photos of other properties with what he considered code enforcement issues. He also noted that where he lives (near the golf course) the city upkeep is noticeable, however, Granada Drive seems forgotten.

Mr. Hiatt then interrupted Mr. Emerson, and asked Mr. Johnson that the Board stay focused on the Granada property. He noted that Code Enforcement would certainly address any of his concerns if he provides them to the department. Secondly, Mr. Hiatt noted to the Board that if Mr. Emerson decides to demolish the house that he will expedite the permitting process to get it done. Mr. Hiatt provided Mr. Emerson with his business card to contact him directly when a decision has been made.

Mr. Emerson continued to speak about the engineering assessment. Mr. Johnson thanked Mr. Emerson, that the Board has an idea of the timeframes needed. Mr. Emerson then added throughout this process, Officer Busch has been helpful and he has worked with her throughout the process. He understands that he needs to sell the vehicles and get them off the property, potentially bulldoze the building, and remove the fence. He stated that he has worked tirelessly to get to the point he is today.

Assistant City Attorney Rick Geller asked to address one legal issue that has come up, being the definition of a disabled motor vehicle. He then cited Sec. 302.8 (1) of the city code describing a disabled motor vehicle means any motor driven vehicle regardless of size which is incapable of being self-propelled on the streets of the city, or which does not meet the requirements for operation upon the public streets of the city, including a current motor vehicle license. A motor vehicle shall be considered disabled if it is in a state of evident disuse. Evidence of disuse may include, without limitation, factors such as the vehicle having no valid license. Mr. Johnson thanked Mr. Geller.

There was no public comment offered.

Board Discussion:

Steve Heller recognized that Mr. Heller has started the process and is trying to make a concerted effort to comply. He noted to Mr. Emerson that he knows what still needs to be done, and that if he worked them out with Code Enforcement he would not be in front of the Board. He recognized the effort and progression Mr. Emerson has made with the exception of the vehicles, the fence repair and the roof, and questioned what action the Board needed to take.

Mr. Emerson spoke up, noting that the entire area around Granada Drive is "Winter Park's Private Little Landfill", stating that everyone goes there and dumps their trash. Mr. Johnson interjected, noting that Mr. Emerson was going astray again. Mr. Emerson noted that a lot of the trash on his property is not his, but dumped there. Mr. Johnson noted that the Board is in limited discussion.

Mr. Mandelkern inquired if the Board was in open session or closed session. If in closed session, there was to be no dialogue between the Board and the Respondent. Mr. Johnson responded that the Board was in a closed session. Mr. Emerson was then asked to be seated.

Mr. Mandelkern noted his concern was placing time limits on what needs to be completed. He expressed that Mr. Emerson is trying to cooperate, but the issues cannot continue indefinitely. He then asked if the city had a position, as the proposed motion has a blank for the number of days to come into compliance. He requested help in determining reasonable timeframes rather than the Board trying to guess.

Mr. Boyer suggested dividing the vehicles and fences from the roof repair due to the need for a permit and the amount of work necessary. Mr. Mandelkern agreed.

Mr. Boyer asked hypothetically if the vehicles were removed, and then brought back, what happens? Assistant Attorney Rick Geller responded that it would then be considered a repeat violation.

Discussion ensued between Building and Permitting Director Gary Hiatt, Safety and Code Compliance Manager Susanne Porras. Officer Porras stated that the city would agree to 60 days to provide something to the Building Department on the roof repair or demolition, reminding the Board that Director Hiatt would expedite the permit application. Mr. Hiatt confirmed a maximum of 60 days would be acceptable to receive an application to rebuild, or a permit application to demolish the structure.

Mr. Boyer offered that the removal of vehicles, debris, and old fencing should be done within five days; a fence permit within 30 days (if the respondent chooses to replace it), and the roof repair or demolition permit application within 60 days. Mr. Hiatt stated again that if notified he will expedite the permit application approval.

Mr. Geller offered, for the clarity of the motion, five days to obtain valid tags for the vehicles, or move them from plain view, 30 days to remove the dilapidated fencing and apply for a fencing permit, and 60 days to apply for a roofing or demolition permit, pending the outcome of the engineering assessment.

Mr. Geller also noted that the motion should include a finding that proper notice was given to the respondent, and include language to include all required permits to be obtained.

Motion:

A motion was made by Wayne Johnson:

From the evidence presented today, I move to find that the City gave proper notice to the the Respondents, Eric Blaine Emerson Sr. and Shara Mae Guillang Emerson, Compliance Board Case #PM-22-0041, owners of 511 Granada Drive, Winter Park, FL 32789 in violation of Chapter 22, Sections 22-176 (adopting the IMPC, 2021 edition), 22-177 (amending the IPMC), Sec 202 Nuisance (2) (3) (16) (21), Sec 302.1 Sanitation and Storage of Materials, Sec 302.7 Dilapidated Fences, Sec 302.8 Abandoned and Disabled Motor Vehicles, 304.1.1 (8) Unsafe conditions, and Sec 308.1 Accumulation of Rubbish.

The respondents are ordered as follows:

- (a) Within five days of today's hearing to move the disable vehicles from the property;
- (b) Within 30 days of today's hearing to apply for the required permits for fencing or removal of fencing;
- (c) Within 60 days of today's hearing to apply for the required roofing or demolition permit.

Failure to comply with this order will result in fines of up to \$250.00 per day per violation for each day the violation continues. The Respondent is further ordered to contact the City Safety & Code Compliance Officer and provide documentation of each action within the above stated time periods.

Mr. Geller offered a correction from the Building department to replace "acquire the permits" to "apply for the permits". Mr. Johnson agreed to these changes.

Mr. Mandelkern offered a minor amendment to the motion, to include the hearing date in the order.

Mr. Geller clarified with Mr. Johnson if the \$250 per day fine applied to all violations, or if the fine is being applied per violation. Mr. Johnson amended the motion to read "per day, per violation" due to the different time frames provided for compliance.

Motion seconded Mr. Mandelkern

Mr. Bond: In favor

Mr. Heller: In favor

Mr. Johnson: In favor

Mr. Mandelkern: In favor

Mr. Boyer: 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

Assistant City Attorney Rick Geller addressed the Board. He responded to an email from former chair Mr. Mandelkern as to whether there was a requirement to hold a Massey Hearing for the imposition of fines on the 6 Isle of Sicily cases.

Mr. Geller expressed his regret for not being at the December meeting; he was covering an emergency hearing in Circuit Court at that time.

Mr. Chumley, who attended in my absence, was not aware that those were repeat violations. He did not advise the Board that when you have a repeat violation you do not need to have a Massey Hearing. Where typically you give a respondent a set amount of time to come into compliance, then you have a Massey Hearing to determine if compliance was achieved or if other fines should be imposed.

Mr. Geller read Florida Statute 162.09: *An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector.*

In the 6 Isle of Sicily case there were two orders issued. The first one pertained to tree removal, and there was a specific finding by this Board that because the respondent committed repeat violations the board was able to issue fines immediately without allowing additional time for compliance pursuant to Section 2-107 of the City code and F. S. S. 162.09 (1). There was no question that tree removal had occurred previously on the property. The computation of the fines for tree destruction includes a repeat offender fine double as per Section 58-299(c).

The second order pertained to shoreline alteration. There was also a prior history of shoreline alteration, the removal of aquatic vegetation, and damage to the lakes. The one thing that was new was the dumping of sand to create a private beach, but it was not the first time the shoreline had been altered as found by the city. There were findings of violation of Sec. 114.5, damaging lakes, which includes altering, changing, or defacing the banks or shoreline. There was also a violation of Sec. 114-6, shoreline protection, the removal of aquatic shoreline or waterfront vegetation, and that had happened more than once. Again, there was a specific finding in this order that because the respondents committed repeat violations the Board has the authority to issue fines immediately without allowing additional time for compliance.

There was no appeal. If there was any technical objection, it was not raised. The legal term is Res judicata; this is now a matter of settled law.

There were some follow-up questions from Mr. Mandelkern. One was "does recording in public records the Board's orders in both cases constitute a lien on the property, or is a specific recorded lien instrument necessary?" The answer is found in the Florida Statutes, and in the City Code. It says "a certified copy of an order imposing affine or fine plus repair cost may be recorded in public records and thereafter shall constitute a lien against the land on which the violation existed and upon any other real and personal property

owned by the violator.” That is found in Sec. 2-107 (e) as well as in F. S. S. Chapter 162. Once the Board Orders are recorded in public record, they constitute a lien on the property.

The second question was “once the lien was recorded, does the city have any other recourse to enforce compliance with the orders so the fines are paid, and the trees and shoreline are restored?” In other words, does the lien just sit there? The answer is yes, the lien can remain until the owner wants to sell the property. A Title company will not issue title insurance for a property unless the liens are satisfied.

The other possibility here is that after three months after the filing of any such lien, the Code Compliance Board may authorize the City Attorney to foreclose on the lien and also sue to recourse or sue for recovery of the amount of the lien, but that may not be necessary if you already have a lien on the property. This is something that can be considered by the city; the key question there is if the property is Homestead. The city cannot foreclose on Homestead property. In this case, the property is not homestead.

Mr. Boyer confirmed with Mr. Geller that the respondent can leave the lien there.

Mr. Mandelkern asked if the fines imposed keep accruing or if they are now fixed. Mr. Geller stated they keep accruing per the language in the orders. There is a per diem increase in the amount of the fine.

Mr. Heller asked if there was anything that could “make them” comply. Mr. Geller responded no.

Officer Porras informed the Board that the State of Florida has a separate case against the respondent. Code compliance also received confirmation from the Director of Sustainability and Natural Resources, Gloria Eby, in which she received and email confirmation from the State of Florida that they are going forward with a case against Mr. Dawoud as well.

Mr. Mandelkern inquired if the State case was for the shoreline violations; Office Porras confirmed it was. Mr. Mandelkern inquired if the state has more enforcement than the city; Officer Porras stated it is separate enforcement, but additional enforcement on top of the city.

Mr. Mandelkern asked Mr. Geller if to his knowledge the city has ever foreclosed on a lien placed on a property. Mr. Geller responded not since he has been representing the city, however, there have been discussions with staff in the past year. Mr. Mandelkern asked if foreclosure required city approval; Mr. Geller stated it required the Code Board's approval. Officer Porras noted that a case had to have a minimum of \$50,000.00 in fines, and also required the approval of the City Commission.

Mr. Mandelkern noted that (speaking for himself) the substantial fines placed do not seem to have any effect on the property owner, so he is asking what else the Board can do. Mr. Geller responded that the Board could request this be added to the agenda of the next code board meeting. Whether the Board wants to authorize the city attorney to foreclose on the property and give proper notice to the Mr. and Mrs. Dawoud.

Mr. Mandelkern inquired if there was any knowledge of a mortgage on the property. Mr. Geller noted that would have to be looked into via a Title report to obtain the information. Mr. Mandelkern inquired that if there were liens placed on the property that they would be a violation of the mortgage. Mr. Geller noted he did not know without having the mortgage information, and also that he is not a real estate attorney. Mr. Geller thinks Mr. Mandelkern's assumption made sense, however, if there is a pre-existing mortgage a lien imposed based on the Board orders, the city would likely be in line behind the purchase money mortgage.

Mr. Geller ended his presentation with a question to the Board regarding their desire to see this case on the agenda for the next meeting. Mr. Johnson stated it would be best to perform the title search first. Mr. Geller noted his office would order the title search report and provide the Board with more information to help them decide on possible foreclosure.

There was a question raised about the homestead status of the property; Office Porras told the Board that she verified it is not homesteaded per the Orange County Property Appraiser website.

Mr. Mandelkern asked if this was placed on the agenda, did it give the property owner an opportunity to come before the Board, or is it just a consent item. Mr. Geller stated that out of an abundance of caution he would want to give the owner proper notice because it would be affecting their rights.

Mr. Mandelkern inquired with Mr. Geller about the case with the Federation of Garden Clubs. Mr. Geller reminded Mr. Mandelkern that this case was resolved several months ago; and that the city won in part, and lost in part. The court determined that the Code Compliance Board did not have the authority to require the Garden Club to obtain the City Manager's authorization before holding events, that it was beyond the powers of the Board. The city decided not to appeal the decision because there have been no complaints about the property in more than one year.

9) Upcoming Agenda Items

- a. CCB#-BLDG-23-0008 2661 Via Tuscany, Winter Park, FL 32789
Developer & Builder Group, LLC (Massey Hearing)

10) Adjournment

Mr. Mandelkern made a motion to adjourn the meeting; seconded by Mr. Bond.

All voted in favor to adjourn the meeting at 4:24 pm.

Minutes approved by the Board on February 4, 2024.

/s/ Susan Pruchnicki, Board Secretary