



Code Compliance Board Meeting Minutes

July 6, 2023 at 3:00 p.m.

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

1) Call to Order

Chairman Paul Mandelkern called the meeting to order at 3:02 p.m.

a. Roll Call

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

Absent: Larry (Chris) Tabor.

Andrew W. Mai, Fishback Dominick Law Firm

Staff Present: Safety & Code Compliance Division Manager Susanne Porras; Director of Building & Permitting Services Gary Hiatt; Park Services Manager Josh Nye, Board Secretary Susan Pruchnicki.

b. Chairman Mandelkern adjusted the meeting agenda to hold the election of a new chair and Vice Chair prior to starting the meeting.

1. Mr. Wayne Johnson was nominated as the new chair by Mr. Schmalz, and seconded by Mr. Bond. **Motion carried unanimously with a 6 -0 vote.**
2. Mr. Bond was nominated by Mr. Johnson and seconded by Mr. Boyer for Vice Chair; Mr. Bond respectfully declined. Mr. Todd Boyer was nominated by Mr. Mandelkern to remain as Vice Chair; seconded by Mr. Schmalz. **Motion carried unanimously with a 6-0 vote.**
3. At this time Mr. Mandelkern passed the gavel to Mr. Johnson to chair the meeting.

c. Statement of Purpose was read by Mr. Johnson

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, June 1, 2023

Motion made by Paul Mandelkern to approve the minutes as drafted and presented; seconded by Todd Boyer. Motion carried unanimously with a 6-0 vote.

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

There were no public comments

5) Public Hearings

- a. New Case **CCB#LDC-23-0315 – 201 Osceola Court, Winter Park, FL 32789**

Violation Description: Workers under contract to Z-Properties Group, Inc. and on behalf of the property owner at 201 Osceola Ct. removed a protected 46" laurel oak at 201 Osceola Ct. without a permit.

Codes Cited: **Chapter 58, Section 58.299** -Penalties for Tree Removal Without Required Permit for Tree Damage of the City of Winter Park Land Development Code.
Section 58-287 – Tree replacement and financial compensation requirements.

Officer Susanne Porras, Safety & Compliance Division Manager, presented the history of the alleged violations, along with the property's details and description as obtained from the records of Orange County Property Appraiser's office. Officer Porras noted that compliance requirements include obtaining an after-the-fact removal permit and planting four 3" minimum caliper Florida grade #1 approved shade trees or plant eight 2" minimum caliper Florida grade #1 approved understory trees OR pay \$10,120.00 into the Tree Trust Fund. Officer Porras also presented an aerial photograph of the tree, violation photographs dated December 8, 2022, and December 19, 2022, and presented evidence of previous code violations committed by Mr. Zane Williams (Z-Properties Group, Inc.) dated February 2, 2017, March 1, 2017, May 11, 2017, and June 12, 2017, as well as a Notice of Violation from Urban Forestry dated December 21, 2022. Officer Porras answered questions posed by board members during the presentation.

Following Officer Porras' presentation, Parks Services Manager Josh Nye clarified that the tree removal occurred under the previous property owner. The code violation was re-issued to include the new property owner as per Florida Statute 162. The new property owner purchased an empty lot and was not aware of the tree removal until the new violation was issued. For this reason, any penalties are to be solely the responsibility of the contractor, Z-Properties Group, Inc.

The following spoke on behalf of the Respondents:

Chanel Vicari of 2150 Huron Trail, Maitland, Florida represented Z-Properties Group, Inc. She alleged that the respondent received verbal permission from Stefano Alvernia (city arborist) on December 6, 2022 to remove the tree. Upon the verbal approval, a permit was applied for on December 8, 2022, and the tree was removed on December 10, 2022. The removal was completed prior to the permit being approved and issued. She stated that the company feels the penalty is punitive as based on their actions. Mr. Schmalz questioned why the tree was removed on a Saturday by the demolition company before the permit was approved. Ms. Vicari stated that many demolition companies work on Saturday, and they had the tree removed at that time.

Teresa Williams of 1450 Chestnut Ave., Winter Park, Florida, the property owner, stated that she was unaware of the tree removal when she purchased the property. No information appeared in a property search. She purchased the property in late February.

There were no public comments.

Board Discussion

Mr. Mandelkern inquired about the maximum fines that could be imposed on a habitual offender. Mr. Nye noted that the requested fine could be doubled, and an additional \$5,000 fine for irreparable damage could be added. Mr. Heller inquired about the property sale, that this should have come up on a property search. Clarification was made by Officer Porras that a code violation not associated with an open tree removal permit, or if there are no fines or liens against the property it will not show. Mr. Mai noted that a diligent title company would call the city but that isn't always done.

Mr. Johnson asked Mr. Nye who Stefano Alvernia was based on a letter filed by the contractor on February 10, 2023. Mr. Nye stated that Mr. Alvernia was the Superintendent of Urban Forestry at the time, and the one who respondents alleged gave verbal approval for the removal. The permit must still be applied for; an arborist needs to inspect the tree before approving the permit within 14 days of the application being filed. Mr. Nye

reminded the board of the previous infractions by the contractor. The tree was not properly assessed as it was removed before the assessment could be performed. Mr. Boyer inquired about a building permit being issued if a tree removal permit existed.

Mr. Johnson asked Officer Porras about the notices provided to the homeowner and the contractor; Officer Porras confirmed that notices were mailed to the owner, the contractor, and the registered agent.

Mr. Mandelkern asked the city attorney if the Board had the power to impose the fine on the contractor and not the homeowner. Mr. Mai stated yes, as the contractor was the one who made the action of cutting down the tree.

Mr. Heller stated that the violation was clear in his opinion.

Mr. Mandelkern inquired about the dollar amount for the fine as it was not set in the proposed motion. Officer Porras explained that the amount was left blank for the board to determine how much of the possible fines they wished to impose.

Mr. Boyer inquired with Mr. Nye about the fines available to the Board to impose. This information is in Sections 58-299(c) and 58-287, attached to the Notice of Hearing. Section 58.300 (d) allows for an irrevocable fee of \$5,000 fee for irreparable damage. This was not in the packet as the intent was to obtain compliance; it is a judgement call to impose additional fines. Mr. Mai confirmed this information.

Mr. Mandelkern asked Mr. Mai asked about the amount that could be imposed vs. the \$10,120.00 fine requested. Mr. Mai confirmed that the Board could impose higher amounts based on the codes and state law, up to \$25,240.00.

Motion made by Mr. Johnson: from the evidence presented today, this board is issuing an order finding the Respondents, Z-Properties Group, Inc., for Code Compliance Board Case #LDC-23-0315 in violation of Chapter 58; Section 58-299 – Penalties for tree removal without a permit or for tree damage, (a), (b), (c), and Section 58-287. – Tree replacement and financial compensation requirements, (1), a, b, c, d e, f, g, h, I, (2), a, b, c, d, and e of the City of Winter Park Land Development Code. A fine of \$10,120.00 is to be paid within thirty (30) days of issuance of an order and posting. Seconded by Douglas Bond. Mr. Boyer confirmed that the fine was payable to the Tree Trust Fund.

Mr. Mandelkern made an amendment to the motion to increase the amount of the fine to the maximum \$25, 240.00 as permitted by code and state law. No second was received; the motion was withdrawn.

The original motion carried unanimously, with a 6-0 vote.

Mr. Nye left the meeting after the decision.

b. CCB#20-60 – 358 W Comstock Ave – Massey Hearing

VIOLATIONS: Permit #13-730 for residential alterations was issued 3/29/13 and work has not been completed within 12 months from permit issuance date.

CODES CITED: **Chapter 22, Section 22-28** amendments to the Florida Building Code, **Section 105.4 Conditions of Permit**; Permit term and intent, **105.4.1.2 and 105.4.1.3** of the Florida Building Code, as adopted and amended by the City of Winter Park.

Officer Porras, Safety and Code Compliance Division Manager, presented the case against the respondent. Mr. Forest G. Michael of 358 W Comstock Ave., Winter Park, FL 32789 has been verified as the property owner. Officer Porras provided a brief history to the Board for this case with codes cited. On 9/3/20, the board determined that the respondent (FGM) was in violation of the cited codes. The respondent was ordered to complete the front façade and all work that can be viewed from the public right-of-way as stated in permit or restore to its preconstruction condition and within 120 days. The respondent was ordered to place fill in areas adjacent to the sidewalk to level within 30 days. The respondent was also ordered to remove all visible construction materials from the site that can be viewed from the public right-of-way within 30 days. The order stated that failure to comply with the order would result in fines of up \$250 per day per violation for each day the violation continued.

Officer Porras provided a map of the property location and photos of the property taken in 2006 that were shared at the first code board hearing. Additional photos taken June 1, 2023 were provided as an accurate representation of the property's current state. Additional photos taken July 5, 2023 were then presented; Officer Porras stated that she met with the property owner and Building Director Gary Hiatt on July 5, 2023. A recommended motion was provided based on the evidence.

Building Director Gary Hiatt distributed printed information from the Building Department on this case to Board Members. This was entered as evidence in the case.

Director Hiatt noted that it was important to remember that the Notice of Violation and Findings of Fact says to complete the façade and all work visible from the public right of way as stated in Permit #13-730. Page 1 shows the last approved inspection was on March 1, 2018. The inspection listed on June 25, 2019 was disapproved on rebar; the inspector told Mr. Hiatt it was because of the slab. This document confirms the length of time the project has been underway. The next three pages are e-mail correspondence between Mr. Michael and the Building Department and copies of improvement plans for the property that ended in 2019. Mr. Hiatt said there were large gaps between inspections that equate to the long timeframe of the project. Copies of the plan documents are included. Page S-O2 shows a lower garden arbor, S-03 shows existing elevations and the arbors for the new elevations, S-04 is landscaping, S-05 is staging approach are, and S-06 is what the staging approaches are supposed to look like.

The site visit yesterday shows concerns. The pictures show the wood framing members of the existing structure; what is seen is wood that has been exposed to the elements for quite some time. The discoloration warrants concern about the structural integrity of what's there and the time it has been exposed to the elements. Some of the roof rafters display the same concerns. Due to these conditions, before any permit could be reinstated a structural engineer would have to address the missed inspection and the structural integrity of the building on the front porch area. It has been three code cycles ago that the permit was issued. Additional concerns are wind born debris due to the fact that it is storm season. It was noted that it has been ten years since the permit was issued, with little progress.

The Respondent, Mr. Forest G. Michael of 358 W Comstock Ave., Winter Park, FL 32789, commented in great detail that he felt all items from the September 3, 2020 hearing were completed and he was in compliance.

No Public Comments were offered.

Mr. Johnson opened the floor for Board Discussion.

Board Discussion:

Mr. Johnson inquired about a construction permit. Officer Porras said it was expired at some point. Building Director Gary Hiatt will explain. At some point in 2020 construction stopped and the city began receiving complaints. Code Compliance began receiving complaints again in 2023 from neighbors about the condition of the property, which is the basis for this hearing.

Mr. Boyer asked about the status codes on page one. Mr. Hiatt noted that these codes were AP is approved, DA is disapproved, and CE/CA is canceled. Mr. Boyer asked if this was because the permit ran out; Mr. Hiatt noted that it could have been various reasons (time, schedule).

Mr. Mandelkern noted that an order was issued in 2020; he has completed Item 1 of the order to clear debris. He questioned Mr. Hiatt about the completion of Item 2 (complete the construction or restore to original condition); Mr. Hiatt noted that he has not based on the evidence provided. Item 3 – add fill to level the areas at the sidewalk; Officer Porras interjected that some areas needed attention, these were not complied with as of the 7/5 inspection.

Mr. Johnson confirmed the date of the original orders as being September 3, 2020 with Officer Porras. Officer Porras noted that a copy of the order was added to the Agenda Packet.

Mr. Johnson asked if the plans presented were his (Michael Planning of Florida); Mr. Michael confirmed that it was his company. Mr. Johnson then asked of Mr. Michael felt he was in compliance with what was submitted to the city; Mr. Michael stated yes.

Mr. Johnson brought up the condition of the exposed rafters on the façade that the Building Department considers unsafe. Mr. Michael stated that the wood would be replaced with pressure-treated wood that will discolor but in a more attractive way. He noted that the structure was sounder than when he purchased the property. Mr. Johnson stated the concern was not the discoloration but the pictures indicate two pieces of wood meeting without a tie-in. Mr. Michael stated that there was another piece of wood behind it that wasn't visible in the picture, and that it has withstood serious hurricanes.

Mr. Johnson noted the other serious concern is the length of time between the first order and current where the façade and the wood is concerned. Mr. Michael stated that he completed the façade and also built significant side walls that are not visible in the photos presented. These are an exact replica of Mayan architecture and style. He also did a lot of gardening to improve the appearance of the property.

Mr. Boyer questioned why a sign still indicates a construction site, and if the work is completed why are there still blocks sitting around. Mr. Michael noted that the visible blocks are not sitting around, that they were serving as a platform for construction of the arbor, and that he has complied with storing materials away from the public view. He noted the installation of a black fence (a tarp draped over a piece of wood) to obscure the view from the right of way.

Mr. Boyer also questioned the For-Sale sign visible in the photos presented and asked Mr. Michael if the property was indeed up for sale. Mr. Michael stated that Kelly Price had it listed for a full year but it is now off the market. He wants to complete the work and live there. He stated he has a great relationship with his neighbors.

Mr. Bond asked Mr. Michael how many more years he thought it would be before the project would be finished. He plans to continue to improve the property for as long as he is able to given his age. Mr. Bond confirmed with Mr. Michael that it had been ten years since the permit was first issued. Mr. Michael stated that he received a variance from the Board of Adjustments for a "few things" (not specified). He noted that the area was crime-ridden and that he started calling the police and cleaning up the property, which allowed Dan Bellows to build condominiums and such. Mr. Michael takes credit for the improvement of the area overall.

Mr. Johnson called Officer Porras back to the podium to display a photo from June 1, 2023. Mr. Johnson asked Director Hiatt about the wood abutting displayed. Mr. Hiatt could not confirm the integrity; it needs an engineer's assessment. Mr. Johnson also asked about concrete that was poured; Director Hiatt noted that the inspection was disapproved and never re-inspected.

Mr. Mandelkern requested to view the photos taken July 5, 2023 again. He questioned Director Hiatt if based on the photo if the façade and other work that could be viewed from the public right-of-way as stated in the permit. Director Hiatt noted that the view of the photograph is from the public right-of-way, and according to the plans to complete the project he would have a final approved inspection. The photo does not match the plans submitted for permitting. Mr. Mandelkern asked if Mr. Hiatt if for the purposes of the Massey hearing that the property owner has not completed the façade and other work that could be viewed from the public right-of-way; Director Hiatt stated that the project is not completed. Mr. Mandelkern asked Director Hiatt if he could tell from the photo displayed if the owner has added the fill to the areas adjacent to the sidewalk to make it level. Mr. Hiatt stated that this is not within the purview of the Building Department. As it is in the right-of-way that falls under the Engineering Department to determine if what was done is acceptable. Mr. Mandelkern noted that he was trying to make it clear that these two items were what the board was trying to determine compliance at this meeting.

Officer Porras commented that per the inspection conducted 7/5/23 filling the areas adjacent to the sidewalk was not in compliance. Mr. Mandelkern asked Officer Porras to point out the area(s) not in compliance on the photograph being displayed. She pointed out a visible area of erosion. Mr. Michael interjected that he disagreed; Mr. Mandelkern asked that Mr. Michael allow Officer Porras to finish. Officer Porras pointed out another area by the For-Sale sign. Again, Mr. Michael interrupted; Officer Porras respectfully asked Mr. Michael to allow her to finish. Officer Porras noted that the area adjacent to the sidewalk was the same at the time of the site visit on 7/5/23 as it was before. Mr. Michael sent Officer Porras an email stating that corrections had been made, but another visit to the property has not been made to verify this.

Mr. Johnson requested clarification on the requirements to fill in the area, that concrete, soil, mulch, etc. could be used to correct the trip hazard; Officer Porras confirmed.

Mr. Boyer questioned the black plastic curtain, which he noted is not allowed but is not part of the discussion today. Officer Porras noted that the owner stated it is the fencing installed to hide the construction debris that was cited.

Mr. Mandelkern reiterated that the plastic is not what is being considered today, that it is not part of the front façade. Officer Porras agreed, but it was part of the previous order to remove construction debris from the public view. Mr. Mandelkern also confirmed with Officer Porras that Mr. Michael had not removed all the construction debris. Mr. Boyer interjected that said debris was hidden behind the black plastic; Officer Porras confirmed. Mr. Bond asked if this would be considered as the debris being visible, Officer Porras said no because of the installation of the tarp with the construction sign visible.

Mr. Bond made an inquiry about submitted plans. Officer Porras responded that she had records.

Director Hiatt asked the Board to keep in mind that an approved final inspection would include all departments associated with this project. That is the key element in the case and includes the right-of-way and removal of the debris.

Officer Porras submitted for the record submitted plans for the project as evidence.

Mr. Boyer clarified that Mr. Michael is not an engineer,

Mr. Heller inquired if there was a rendering of the final project. Mr. Michael stated no, that was totally mental, and that it was not required by the Building Department. Mr. Heller noted that he understood that.

Mr. Heller noted that it seemed in the opinion of the city Directors that Mr. Michael is not in compliance and asked if the rest of the felt the same.

Mr. Johnson inquired with Mr. Mandelkern about the case since he was on the Board. Mr. Mandelkern noted that the case was three years ago. Mr. Boyer noted that he remembered the laydown area in the back and block, but this item was not included on this.

Mr. Johnson noted his point of concern and of the city is the front facade. It does appear dangerous and not just because of the wood, but because it wasn't tied in. There is also

the three-year gap. Debris could have been removed, but is now back, or could have existed the entire time in his opinion.

Mr. Mandelkern pointed out that city stated all debris and materials have been removed from the site so that it is no longer visible from the right-of-way, Mr. Michael would be in compliance. He asked Officer Porras if this was correct. Officer Porras noted that it was not removed until recently. Mr. Boyer asked Officer Porras about the tarp; she stated she is not allowed lift it.

Mr. Boyer then stated the Items 1 and 2 of the order are not completed, but Items 3 and 4 are debatable. Mr. Mandelkern agreed, that the benefit of the doubt is in favor of the property owner.

Motion made by Paul Mandelkern: From the evidence presented today, this board is issuing an order finding the Respondent Forest G Michael owner of 358 W. Comstock Ave., Winter Park, Florida 32789, the subject property in violation of the order issued by the city Code Compliance Board on September 3, 2020.

On September 3, 2020 this board ordered the respondent to either

- a) Complete the front façade and all the work that is visible from the public right-of-way as set forth in permit #13-730 or**
- b) Restore the structure to its pre-construction condition within 120 days; add fill to the area adjacent to the sidewalk to render the area level with the sidewalk as stated in permit #13-730, and to complete either set of tasks within 30 days.**

The board further ordered the respondent to clean all debris and construction materials from the site so that material was no longer visible from the public right-of-way within 30 days. As of the date of today's hearing, July 6, 2023, the board finds by a preponderance of the evidence

- 1) The front façade and other work visible from the public right-of-way is not complete**
- 2) The respondent has not restored the structure to its pre-construction condition.**

The board finds that the respondent received all required notices of the September 3, 2020 order, and of this hearing in accordance with Section 2-109 of the city code and was given a full and fair opportunity to be heard.

In accordance with the requirements of Massey v. Charlotte County 842 So. 2d 142, Fla 2nd DCA 2003, the board hereby assesses a fine against this respondent in the sum of \$250 per day per violation running from 120 days after September 3, 2020

and determine the amount of the fine in accordance with Sec 2-107 of the city code and Florida Statutes Section 162.09.

The board considered the gravity of the violations, any actions taken by the violator to correct the violations, and any previous violations committed by the violator. The lien recorded in connection with this order shall constitute a lien against any real or personal property owned by the violator.

Motion seconded by Steve Heller. Motion carried unanimously by a 6-0 vote.

6) Non-Action Items

There were no non-action items

7) Staff Updates

CCB#18-870 1260 Whitesell Drive, Winter Park, FL 32789

Ms. Porras updated that the structure was demolished and the land cleared by the City of Winter Park. A lien was placed against the property for costs incurred and daily fines. Should the owner sell the property the lien must be satisfied by the purchaser.

CCB#21-1430 2212 Azalea Place, Winter Park, FL 32789

Mr. Mai updated that an appeal has been filed. Fishback Dominick defended the appeal and was successful. The board's decision was affirmed on June 21, 2023 by Judge John Jordan.

CCB#19-1411 1400 South Denning Drive, Winter Park, FL 32789

Still awaiting a response from the Circuit Court. No updates.

9) Adjournment

Wayne Johnson made a motion to adjourn the meeting at 3:23 p.m.; seconded by Douglas Bond. Motion carried unanimously with a 6-0 vote.

Next meeting is scheduled for August 3, 2023.

Minutes as amended approved by the Board on September 7, 2023.



/s/ Susan Pruchnicki, Board Secretary