



Code Compliance Board Minutes

January 6, 2022 at 3:00 pm

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

Meeting Called to Order

Paul Mandelkern, Chairman, called the meeting of the City of Winter Park Code Compliance Board to order at 3:00pm on January 6, 2022, in the Commission Chambers, Winter Park, Florida.

Roll Call

Code Compliance Board Members: Todd Boyer, Wayne Johnson, Paul Mandelkern, Sherwin Sargeant, John Schmalz, Douglas Bond and Mark Van Valkenburg were present.

Assistant City Attorney: Giffin Chumley from Fishback Dominick Law Firm

Staff: Director of Risk Management, Safety & Code Compliance, & Fleet Keri Martin, Safety & Code Compliance Manager Susanne Porras, Safety & Code Compliance Officer Phillip Wade, Safety & Code Compliance Officer Christina Busch, and Recording Secretary Neena Ramjit.

Approval of Minutes

Motion made by Mark Van Valkenburg; seconded by Wayne Johnson to approve the June 24, 2021 minutes. The motion passed unanimously.

Paul Mandelkern read the statement of purpose into the minutes.

Swearing In of Witnesses

All witnesses were sworn in.

Compliances

CC#21-836, 1298 Howell Branch Road, Winter Park, FL 32789

CC# 20-1412 1737 Magnolia Avenue, Winter Park, FL 32789

New Business

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

Violation: Workers under contract with FG Schaub Custom Homes, LLC and on behalf of the property owner at 2212 Azalea Place performed severe root pruning on a 36" Laurel Oak at 950 Cypress Lane causing irreversible and irreparable damage to the tree.

Codes Cited: Chapter 58, 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. Presentation of the alleged violation was given.

Susanne Porras, Safety & Code Compliance Manager, and Josh Nye, Superintendent of Urban Forestry, spoke in regards to this case.

Susanne Porras, Safety & Code Compliance Manager, for the City of Winter Park presented the property's history and a brief case timeline:

- The Notice of Hearing was issued on December 21, 2021.

- Property information obtained from the Orange County Appraiser office on November 16, 2021 was presented detailing the zoning and location of the property.

Josh Nye, Superintendent of Urban Forestry, presented the technical description of the tree. The Urban Forestry Staff Survey Map included the depiction of the 36-inch diameter Laurel Oak tree in respect to the property line of the two adjoining properties. A photo was shown of the 36-inch Laurel Oak tree in good health with the wall located on the 2212 Azalea Place still in construction. The major roots along one side of the 36-inch Laurel Oak tree were ground up to the trunk which renders the tree unstable, hazardous, and in need of removal. Prior to this damage, Josh Nye states that the tree would not be considered a candidate for removal.

The following discussion was held with Board members and City staff, Josh Nye, to clarify the extent of the violation:

- The replacement tree is required to have a 7-inch diameter measured 12 inches from the base of the tree
- The quote Mr. Neumayer, owner of 950 Cypress Lane, received stated \$7,900 for the cost of the tree and \$1,500 for remedial soil replacement, totaling \$9,000.

Respondent, Fred Schaub, owner of FG Schaub Custom Homes, LLC, participated in person. Mr. Schaub provided his understanding of the case and addressed Board member questions. He claimed that there was two permits issued to him:

- Wall permit to construct the wall
- Tree permit for the removal of the tree to remove the tree after the cutting of the roots has already taken place.

Josh Nye, Superintendent of Urban Forestry, responded to Mr. Schaub testimony. Josh Nye clarified that the permit for the removal of the tree is an “after the fact” permit which is issued as a part of the process to initiate the Code Violation. Josh Nye stated during the ZOOM meeting between Keri Martin, Susanne Porras, Josh Nye, and Assistant City Attorney Richard Geller, it was discussed that Mr. Neumayer would obtain a quote for an 8-inch Live Oak tree, and he emphasized that only the size of the tree was explicitly agreed upon during the meeting. However, due to the logistics of getting the tree on the lot, the City agreed to accept a 7-inch Live Oak tree during the ZOOM meeting.

Giffin Chumley, Assistant City Attorney, noted that the City is not looking to impose the \$5,000 fine for irreversible and irreparable damage but for remediation to occur by replacing the tree.

Ashley Ong, Assistant Building Official, clarified the terms of the permit issued. He stated that the Tree Removal Permit is a separate permit that is not included in the review of the Wall Permit.

The Board and the City discussed the reason as to why the Live Oak tree was chosen to replace the destroyed Laurel Oak tree and compared the difference between the two trees.

The following offered public comment:

John Neumayer, 950 Cypress Lane, presented a PowerPoint Presentation and discussed the impact of the tree removal. He said that he contacted Stephano Alvarez from the City of Winter Park Urban Forestry Department on June 24, 2021 who then contacted the offender instructing him to remove the tree due to the safety risk it poses to nearby properties. Mr. Neumayer said he never gave permission to Mr. Schaub to remove the tree. The estimate from the company Things That Grow, Incorporated was included in the presentation and shows the detailed costs associated with installing the Live Oak tree.

Board closed portion of hearing for discussion.

Wayne Johnson, made a motion that from the evidence presented today, this board is issuing an order finding the Respondent 2212 Azalea Park Place Winter Park FL 32789 Land Trust, owner of 2212 Azalea Place, Winter Park, FL 32789, have violated Section 58-299 (a) and destroyed or otherwise caused major damage to a protected tree requiring its removal. Due to the irreparable and irreversible nature of the

violation, the Board orders the Respondents to, in accordance with Section 58-299 (a) of the City's Code of Ordinances, remit the cost of remediation determined to be \$7,500, which the board finds is the cost of planting a 12" approved FL #1 shade tree on the lot located at 950 Cypress Ln., Winter Park, FL 32789.

Respondent is to do backfill within 10 days.

Such remediation cost must be paid to the City within 10 days of this hearing order. The Respondent is further ordered to contact the City Code Compliance Officer and provide documentation of completion of the ordered remedial action. City department of Urban Forestry is to inspect and approve any backfill done by the Respondent. Todd Boyer seconded that motion.

Further discussion transpired between Board members and Assistant City Attorney Giffin Chumley.

Motion to amend by Mark Van Valkenburg and seconded by John Schmalz, that from the evidence presented today, this board is issuing an order finding the Respondents 2212 Azalea Park Place Winter Park FL 32789 Land Trust, owner of 2212 Azalea Place, Winter Park, FL 32789, and FG Schaub Custom Homes have violated Section 58-299 (a) and destroyed or otherwise caused major damage to a protected tree requiring its removal. Due to the irreparable and irreversible nature of the violation, the Board orders the Respondents to, in accordance with Section 58-299 (a) of the City's Code of Ordinances, remit the cost of remediation determined to be \$7,500, which the board finds is the cost of planting a 7" approved FL #1 shade tree on the lot located at 950 Cypress Ln., Winter Park, FL 32789.

Respondent is to do backfill within 10 days.

Such remediation cost must be paid to the City within 10 days of this hearing order. The Respondent is further ordered to contact the City Code Compliance Officer and provide documentation of completion of the ordered remedial action. City department of Urban Forestry is to inspect and approve any backfill done by the Respondent.

Additional discussion between Board Members in determining the calculations of the fine occurred.

Motion to amend by John Schmalz and seconded by Wayne Johnson that from the evidence presented today, this board is issuing an order finding the Respondents 2212 Azalea Park Place Winter Park FL 32789 Land Trust, owner of 2212 Azalea Place, Winter Park, FL 32789, and FG Schaub Custom Homes have violated Section 58-299 (a) and destroyed or otherwise caused major damage to a protected tree requiring its removal. Due to the irreparable and irreversible nature of the violation, the Board orders the Respondents to, in accordance with Section 58-299 (a) of the City's Code of Ordinances, remit the cost of remediation determined to be \$9,000, which the board finds is the cost of planting a 7" approved FL #1 shade tree on the lot located at 950 Cypress Ln., Winter Park, FL 32789.

Respondent is to do backfill within 10 days.

Such remediation cost must be paid to the City within 10 days of this hearing order. The Respondent is further ordered to contact the City Code Compliance Officer and provide documentation of completion of the ordered remedial action. City department of Urban Forestry is to inspect and approve any backfill done by the Respondent.

No further discussion.

Motion to amend the original motion carried 6-1. (Mark Van Valkenburg in opposition of amendment)

Motion carried 7-0. Amended motion unanimously passed.

Old Business

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

Violation: Repeated noise disturbances causing imminent interference with peace, quiet and comfort of persons residing in neighboring houses.

Codes Cited: Violation of City Code Chapter/Section: Chapter 62, Section 62-95, 62-96 (a) & (b), 62-97 (2) & (3) City of Winter Park Ordinances.

Susanne Porras, Safety & Code Compliance Manager, spoke in regards to this case.

Susanne Porras, Safety & Code Compliance Manager, for the City of Winter Park presented the property's history and a brief case timeline:

- The Notice of Hearing was issued on April 3, 2020
- Previous Order was issued on July 30, 2020 and signed on August 17, 2020.
- The Notice of Hearing was mailed (regular and certified), posted on the property, and posted at City Hall to comply with Florida Statute 162 Due Process requirements.
- Property information obtained from the Orange County Appraiser office were presented detailing the zoning and location of the property.
- A zoning map of the property (1400 S. Denning Drive) with respect to neighboring properties was shown.
- 6 different Noise Disturbance Reports from Officers with the Winter Park Police Department were presented to the Board. These Noise Disturbance Reports ranged from April 3, 2021 to November 4, 2021.

Discussion was held amongst Board Members and Officer Susanne Porras to gain clarification on the case.

Susanne Porras played 6 videos submitted to her on behalf of the neighbors. There are no Winter Park Police Reports for the videos submitted by neighbors.

After discussion with the Assistant City Attorney, Giffin Chumley, the Board has decided to only consider the 6 instances reported by the City of Winter Park Police.

The following spoke on behalf of the Respondent:

Attorney Eric LaRue, representing the Florida Federation Garden Clubs (FFGC). He reminded the Board of the pending appeal currently in the Orange County Circuit Court of the previous order that was issued on August 17, 2020. Mr. LaRue stated for the record that FFGC objects to any of the other instances of Noise Disturbance aside from the 6 instances reported by the City of Winter Park Police. due to there being no notice of the others. He clarified the safeguards and requirements FFGC has in place for their vendors such as refraining from playing music outside, taking decibel measurements every hour, and requiring that events occur indoors. Each of the 6 reported Noise Disturbance reports was individually addressed by Mr. LaRue. He pointed out that Mead Gardens is within close proximity and they also hold weddings and events that are allegedly attributed to the club (FFGC). He emphasized that the testimony given by the Police Officers in most of the Noise Disturbance reports do not constitute violations of the City Code. The Club (FFGC) would like to be a good neighbor and they have taken and continue to take steps to ensure compliance and ask for no fines to be imposed.

The Board members raised several questions including the extent of the measures FFGC has put in place to prevent noise disturbances, the cost of the events, any fines associated with events found to violate FFGC regulations, and what portion of the previous Order was subject to the pending appeal. Eric LaRue responded that the subject of the appeal is the portion of the Order that required the approval of the City Manager to conduct events.

The following offered public comment:

Michael Larsen, 917 Grove Avenue, participated in person. He acknowledged some improvement but still expressed his concerns for the outside events that continue to occur. He stated that he has lived on the street for 17 years, and only in the past couple of years has it been that bad.

Garrett Feehrer, 906 Camellia Avenue, participated in person. He stated that he consistently sees events go past 10pm and mentioned that the decibel limit of 70 is comparable to noise made by a dishwasher or a vacuum, which one would not hear coming from a neighbor's house. He mentioned that other venues such as Capen House that have a similar layout to FFGC are still respectful to neighbors. Mr. Feehrer stated that FFGC is hosting events almost 3 weekends out of each month.

Shannon Basso, 1421 Nottingham Street, participated in person. She also acknowledged that the noise has gotten better, however, she emphasized that due to the outside speakers, the noise travels. Due to the proximity of her house to FFGC, she stated that she was certain the noise is originating from FFGC and not Mead Gardens. She stated that she is unable to host family or enjoy a movie inside her house due to the noise.

Avery Potter, owner of Cocktails Catering, participated via ZOOM. Mr. Potter works with FFGC for some of their events. He noted that the paid security is having decibel levels recorded by a third party. He claimed that the police do not issue a citation or follow up in the mail with FFGC to make them aware of noise violation reports. He emphasized that the park next door (Mead Gardens) has pavilions in which they play music outside. Mr. Potter expressed that they want to be good citizens and good neighbors by working with the residents.

There were no other public comments.

Discussion was held between the Assistant City Attorney, Giffin Chumley, and the Board to review details of the case and the previous Order issued July 30, 2020.

Board closed portion of hearing for discussion

Mark Van Valkenburg, made a motion that from the evidence presented today, I move to issue an Order finding the respondent, Florida Federation Garden Clubs, tenant of 1400 South Denning Drive, Winter Park, Florida 32789, in violation of the Order issued by this board on July 30, 2020.

On July 30, 2020, the Board ordered Respondent to refrain from disturbing the peace and quiet of the neighborhood in violation of §62-96(a) & (b) (noise disturbances prohibited) and § 62-97(a)(2) and (3) (noise violations specific to the operation of sound equipment and loudspeakers in an unlawful manner) of the Winter Park Code of Ordinances.

At today's hearing on January 6, 2022, the Board finds by a preponderance of the evidence that Respondent repeatedly violated the aforementioned sections of the Winter Park Code on the following dates: 04/03/2021, 04/16/2021, 04/18/2021, 10/24/2021, 10/31/2021 & 11/04/2021.

The Board finds that Respondent received all required notice of the July 30, 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. 2d DCA 2003), the Board hereby assesses a fine against Respondent in the sum of \$1,000 [\$250 PER VIOLATION FOR 4 VIOLATIONS]. In determining the amount of the fine, in accordance with Section 2-107 of the City Code and Florida Statutes § 162.09, the Board considered the gravity of the violations, any actions taken by the violator to correct the violation[s]; 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 but shall specifically exclude the leased property located at 1400 South Denning Drive, Winter Park, Florida, which is property owned by a municipality and therefore not subject to any lien pursuant to this board's order. John Schmalz has seconded that motion.

Board conducted further discussion with the City Attorney to revise the motion.

A motion to amend by Paul Mandelkern and seconded by Wayne Johnson was made stating that from the evidence presented today, I move to issue an Order finding the respondent, Florida Federation Garden Clubs, tenant of 1400 South Denning Drive, Winter Park, Florida 32789, in violation of the Order issued by this board on July 30, 2020.

On July 30, 2020, the Board ordered Respondent to refrain from disturbing the peace and quiet of the neighborhood in violation of §62-96(a) & (b) (noise disturbances prohibited) and § 62-97(a)(2) and (3) (noise violations specific to the operation of sound equipment and loudspeakers in an unlawful manner) of the Winter Park Code of Ordinances.

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The motion to amend the original motion carried 6-1. (Mark Van Valkensburg in opposition of amendment)

Further discussion between Board Members transpired regarding the fine and dates of when the violation occurred.

Motion to amend by Wayne Johnson and seconded by Douglas Bond that from the evidence presented today, I move to issue an Order finding the respondent, Florida Federation Garden Clubs, tenant of 1400 South Denning Drive, Winter Park, Florida 32789, in violation of the Order issued by this board on July 30, 2020.

On July 30, 2020, the Board ordered Respondent to refrain from disturbing the peace and quiet of the neighborhood in violation of §62-96(a) & (b) (noise disturbances prohibited) and § 62-97(a)(2) and (3) (noise violations specific to the operation of sound equipment and loudspeakers in an unlawful manner) of the Winter Park Code of Ordinances.

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The Board finds that Respondent received all required notice of the July 30, 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. 2d DCA 2003), the Board hereby assesses a fine against Respondent in the sum of \$1,500 [\$250 PER VIOLATION]. In determining the amount of the fine, in accordance with Section 2-107 of the City Code and Florida Statutes § 162.09, the Board considered the gravity of the violations, any actions taken by the violator to correct the violation[s]; 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 but shall specifically exclude the leased property located at 1400 South Denning Drive,

Winter Park, Florida, which is property owned by a municipality and therefore not subject to any lien pursuant to this board's order.

Upon a roll call vote to amend the main motion Wayne Johnson, Sherwin Sargeant, Todd Boyer, and Douglas Bond voted yes. Paul Mandelkern, Mark Van Valkenburg, and John Schmalz voted no.

Paul Mandelkern noted that the two dates (04/18/2021 and 10/31/2021) were added back in and the fine increased to \$1500. No further discussion on the main motion as amended.

Upon a roll call vote, Wayne Johnson, Sherwin Sargeant, Todd Boyer, and Douglas Bond voted yes. Paul Mandelkern, Mark Van Valkenburg, and John Schmalz voted no.

Motion carried with a 4-3 vote.

Other Business / Progress

Wayne Johnson asked for confirmation that the CC#21-836, 1298 Howell Branch Road, Winter Park, FL 32789 is in compliance. Josh Nye responded that the trees would be added to each lot as the homes are built in order to ensure the placement on each lot is correct.

Motion to adjourn by Paul Mandelkern and seconded by John Schmalz.

Motion carried unanimously.

Adjournment

There being no further business, the Code Compliance Board meeting was adjourned at 5:21 pm. Next meeting is February 3, 2022 at 3:00pm.

Approved by the Board 02/03/2022.

/s/ Neena Ramjit, Recording Secretary