



Code Compliance Board Minutes

June 24, 2021 at 3:00 pm

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

Meeting Called to Order

Keri Martin called the special meeting of the City of Winter Park Code Compliance Board to order at 3:00pm on June 24, 2021, in the Commission Chambers, Winter Park, Florida.

Roll Call

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

Assistant City Attorney: Richard Geller 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 Jennifer Philippe, Safety Compliance Officer Steven Dunning, and Safety & Code Compliance Officer and Recording Secretary Neena Ramjit.

Election of Board Officers

Motion made by Todd Boyer to nominate Paul Mandelkern as Chairman; seconded by Sherwin Sargeant. Motion carried unanimously 5-0.

Motion made by Paul Mandelkern to nominate Todd Boyer as Vice Chairman; seconded by John Schmalz. Motion carried unanimously 5-0.

Approval of Minutes

No current minutes needing to be approved.

Swearing In of Witnesses

All witnesses were sworn in.

Compliances

None

New Business

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

Violation: Contractors clearing land destroyed a healthy live oak tree.

Codes Cited: Chapter 58, Section 58-299 of the City of Winter Park Land Development Code Tree Enforcement.

Presentation of the alleged violation was given. Jeff Briggs, Principal Planner for the City of Winter Park, and Josh Nye, Superintendent of Urban Forestry spoke in regards to this case.

Jeff Briggs, Principal Planner for the City of Winter Park presented the property's history and a brief case timeline:

- On May 14, 2021 contractors cleared land and destroyed a healthy live oak tree.

- The applicants submitted their plans for new infrastructure and applied to get an infrastructure and tree removal permit.
- Property information obtained from the Orange County Appraiser office on June 9, 2021 were presented detailing the zoning and location of the property.
- The Notice of Hearing was issued on June 9, 2021.

Josh Nye, Superintendent of Urban Forestry, presented the history of surveys and differentiated the various tree specimens on the lot. A Staff Survey map generated from multiple surveys done by both Stefano Alvernia, Arborist, and Josh Nye, Superintendent of Urban Forestry, depicted the trees on the lot according to different categories of trees. Those trees shown in the Staff Survey map included:

- The trees remaining on the lot include: Live Oaks, Laurel Oaks and Exempt Trees (those not requiring a permit)
- Removed trees include: single black cherry tree, live oak, laurel oak, exempt trees, removed without a permit.
- The tree removed that required a permit: Live Oak tree with 2 main stems, each with a diameter at breast height (d.b.h) 27 inches d.b.h., for a total height of 54 inches d.b.h for the tree.

The Live Oak totaled at 54 inches d.b.h was removed without a permit by land clearing workers on May 14, 2021 along with a large number of other trees removed all of which were permitted or did not require a permit. Vast majority of trees on the site were approved for removal with certain conditions. They were required to preserve all the vegetation along lakefront to serve as a temporary screening while constructing the homes and to work with the City to identify trees on the site that are viable and desirable to maintain in perpetuity. All the trees that may be viable in perpetuity except for one, the 54-inch Live Oak tree, are currently left on the site.

Paul Mandelkern, Chairman, asked if any board members had any questions for Josh Nye. There were no current questions.

Jeff Briggs, Principal Planner, restates the purpose of this case which is to address the removal of a 54-inch Live Oak without any permits that was a specimen of historic value. Photos of the lot taken on June 8, 2021 from 2:57PM - 3:10PM at the site (1298 Howell Branch Rd.) and across the street (195 Sandalwood Trl. and 1311 Howell Branch Rd.) were presented to show the extent of the lot clearing.

City staff with the assistance of the City Attorney and the property owner prepared the stipulated agreement. The agreement states the property owner's acknowledgment of the code violation and their responsibility to adhere to resulting penalties the City is allowed to require per law. Due to the nature of the violation, the City is allowed to assess the property owners the maximum fine of \$110 per caliper inch of the tree and double that fee for not having the required permits as a penalty, totaling \$11,880. The City is also imposing a \$5,000 additional charge as allotted by the State of Florida Law for the single violation for its irreversible and irreplaceable damage. The \$5,000 will be used to purchase and plant 5 Live Oak trees on the property. There will be additional trees planted as per the tree removal permit obtained. A 6-foot chain link fence with a green screen will be installed by the property owner on the border of the job site.

Rick Geller, City Attorney, confirmed the maximum penalties the City is allowed to fine per Florida law and highlighted key language of the mitigation agreement. This portion states the owner agrees that the removal of the tree constitutes a violation of the City's code that was of irreversible and irreplaceable nature as described in Section 162.09 Florida Statutes, allowing the City to impose an additional \$5,000 fine. In lieu of the payment of \$5,000, the parties have agreed for the property owner to purchase and plant 5 new Live Oak trees, each measuring 5 inches in trunk diameter, on the property location during a schedule set by the City. Owner will ensure that each of the trees are properly irrigated.

Respondent was not present at the meeting and did not send anyone to speak on their behalf.

John Schmalz, asked several questions regarding the specifications of the replacement trees such as if there was a quote or an estimated value on the replacement trees and if it is a reasonable cost for the such trees, if the City had a choice in the Live Oak tree being planted, if there was an existing warranty on the trees, and who manages the irrigation of the trees. Josh Nye, Superintendent of Urban Forestry, responded from a commercial standpoint that \$5,000 is a reasonable cost for such trees. As far as the tree choice, either himself or Stephano Alvernia, would assess the tree to ensure it meets the proper standards. In this evaluation they would apply Florida Grades and Standards for Nursery Stock in assessing each tree to confirm they meet the standards of a Florida Number 1 Graded tree in order to be approved. The replacement trees are under warranty and that

assures survival of the tree for one year as provided by the code. The property owner will install the irrigation and be responsible for the fees related to maintaining this irrigation. As a part of the tree quality inspection, the Urban Forestry Department will check the quality of the irrigation to check that the trees are getting sufficient water.

Todd Boyer, Vice Chairman, asked if the trees will be planted after construction is done. Jeff Briggs responded to have the builders plant the trees as soon as possible before the construction.

Wayne Johnson, asked if they made an attempt to obtain a permit and if so would it be granted. Jeff Briggs, Principal Planner, responded it would not be approved since the Live Oak tree was healthy and outside of the permitted area for development.

Paul Mandelkern, Chairman, asked Jeff Briggs if the land clearing company does business in Winter Park and if the trees on the lot were marked previously, specifically the 54-inch Live Oak that was removed. Jeff Briggs responded the City has not worked with this company previously however the builder is able to choose the contractor. Josh Nye attested he has not dealt with this company before. Josh Nye gave a brief overview on the process of marking trees for removal. The company flags the trees they wish to remove and the City inspections those trees and flags the trees in which they do not want them to remove to indicate preserved. In regards to the 54-inch Live Oak tree, it was behind the silt fence and it was of mutual understanding that nothing behind the silt fence on the lakefront property was to be touched. Josh Nye testified that he spoke to both the land clearing company and the owner of the property on the physical site and over the phone 1-2 days before removal of the tree to make clear that nothing outside of the silt fence is touched.

The following offered public comment:

Barry Render, 2630 Via Tuscany, and Nancy Freeman, 1055 Tuscany Place, explained they represent 8-9 neighborhood associations nearby the lake and have dealt with this developer previously. They expressed their frustration for this particular developer's frequent mistakes on multiple job sites in which they feel he does not respect the City's sanctions. Due to the current view of Howell Branch Rd. and the traffic, they request a wall to be put up prior to the silt fence. They would like for the developer to meet with the neighbors and plant more vegetation along the lakefront in addition to the 5 Live Oaks trees.

Paul Mandelkern, Chairman, explained the limitations of the board to only address the violation brought before them which is the removal of the 54-inch Live Oak tree.

Barry Render asked if the board could address the violation of the Stop Work Order.

Paul Mandelkern, Chairman, stated he could not address this matter because it was not brought before the board.

Adelbert Sanchez, 2525 Temple Drive, asked the board if his Live Oak tree located on his property but has portions encroaching onto 1298 Howell Branch Road and neighboring vegetation would be untouched by the developer. Josh Nye, Superintendent of Urban Forestry, responds he will be willing to work with the citizen to ensure the Live Oak tree is preserved. Adelbert Sanchez expressed his concern for the destruction of the vegetation will cause water damage to the property.

Frances Leland, 2040 Temple Trail, is concerned that developers will continue to disregard the rules especially after seeing the penalty they received in this case and she is worried about the effect removing the Live Oak had on nearby vegetation. She is requesting a more severe punishment than what was stated in the agreement.

Cheryl Malone, 2400 Temple Drive, expressed her discontent for the developer and disappointment in the City not taking a strong enough position.

George Wiggins, Director of Building and Permitting, stated there was a Stop Work Order executed on the site development permit. He proposed to keep the Stop Work Order in place until the terms of the agreement have been met.

Rick Geller, City Attorney, confirmed the board can make recommendations to City staff; however, the violation of the Stop Work Order would require a separate hearing because it was not originally included in the Notice of Violation and Notice of Hearing, and due process is required.

Donna Render, 2630 Via Tuscany, suggested instead of planting just trees can they be required to plant trees and vegetation. Josh Nye responded stating we cannot make changes to the agreement and the chain link fence with green screen would provide more protection than vegetation but he will convey her concerns to his point of contact for the development.

Chairman Mandelkern closed the public comment portion of the hearing for board discussion.

Wayne Johnson, made a motion that from the evidence presented today, this board is issuing an order finding the Respondent Villa Tuscany Holdings, LLC, owner of 1298 Howell Branch Rd., Winter Park, Florida 32789, Code Compliance Board Case #21-836 in violation of Chapter 58; Section 58-299 - Penalties for removal of protected tree without required permit or for tree damage; Chapter 162.09 Florida Statutes - Damage caused was irreparable and irreversible harm to protected tree and order they respond to comply with the terms set forth in the agreement presented today and signed by both parties. Any breach or failure to perform under the agreement by the respondent may result in the case returning to the Code Compliance Board for further consideration. Todd Boyer, Vice Chairman, seconded the motion

John Schmalz, made a motion to amend the pending motion to state the Building official should take whatever steps are necessary and lawful under Section 6 of the agreement in utilizing his jurisdiction to use the Stop Work Order to effect compliance with the agreement. Sherwin Sargeant seconded.

The Board voted on the amendment to the pending motion. The amendment carried unanimously. There was no further discussion on the motion. The motion passed unanimously

Old Business

None

Other Business / Progress

None

Adjournment

There being no further business, Sherwin Sargeant made a motion to adjourn the meeting at 4:08 p.m. John Schmalz seconded the motion and it passed unanimously.

Next meeting is August 5 at 3:00pm.

Respectfully submitted,

Neena Ramjit Recording Secretary

Approved by Board on January 6, 2022.