



MINUTES

MUNICIPAL CODE ENFORCEMENT BOARD MEETING Wednesday

JUNE 28th, 2023, 2:00 P.M.

CITY OF ST. AUGUSTINE BEACH, 2200 A1A SOUTH, ST. AUGUSTINE BEACH, FLORIDA 32080

I. CALL TO ORDER

Chairman Kevin Mr. Sweeny called the meeting to order at 2:00 P.M.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Mr. Kevin Sweeny, Mr. Edward Pritchett, Mr. Raymond Lovett, Ms. Roberta Odom, Mr. Marshall Schneider, Mr. Patrick Wilson, Mr. Eugene Mariutto

STAFF PRESENT: Code Enforcement Officer Mr. Ferris, Building Official Brian Law, City Attorney Mr. Blocker, Recording Secretary Lacey Pierotti

IV. APPROVAL OF MINUTES OF MAY 31st, 2023, MEETING

Motion: to approve May 31st, 2023, meeting. Moved by Mr. Pritchett, seconded by Mr. Lovett, passed 7-0 by unanimous voice-vote.

V. NEW BUSINESS

- A. Notice to appear issued to Michael Kuc property owner of parcel 169200040 201 3rd Street St. Augustine Beach, FL. 32080 for notice of a repeated violation of the St. Augustine Beach City Code Sec. 3.09.00 (A) - Transient lodging establishments within medium density land use districts.
- B. Notice to appear issued to Karen Pitts property owner of parcel 1640900000 56 Willow Dr. St. Augustine Beach, FL. 32080 for notice of violations of St. Augustine Beach. City Code Sec. 6-1 Adoption of the Florida Administrative Code, 105-Permits, [A] 105.1 Required. St. Augustine Beach City Code, Article VI. - Development, Design, and improvement standards, Sec. 6.02.03 (D) - Rights-of-way.

Mr. Sweeny: Okay, members, I'm going to go ahead and call this meeting to order at two o'clock and ask member Roberta Odom to rise and lead us in the pledge of allegiance for the flag. We have a quorum; I ask that you look over your minutes if you haven't already. We will accept the motion to approve the minutes of our May 31st meeting.

Mr. Pritchett: I move the motion to approve except for page five.

Mr. Sweeny: Except for page five?

Mr. Pritchett: Yes. Last sentence down, instead of if, it should be all. That's due.

Mr. Sweeny: Okay, all. It should be all instead of if on page five. Members, any other corrections? All right, we've got a motion.

Motion: Approval of May 31st, minutes. **Moved by** Mr. Pritchett with change to page five (5), last sentence, first word if to all. Approval of minutes **Seconded** by Mr. Lovett **passed 7-0** by the board unanimous voice vote.

Mr. Sweeny: New business A. Notice to appear to Mr. Michael Kuc, property owner of 3rd Street, St. Augustine Beach Florida. A repeated violation of the St. Augustine Beach Code, referring to transient lodging establishments within medium-density land use districts. Who will be presenting this one today?

Mr. Ferris: I will be Mr. Chair. This is a repeated violation which began back in July of 2022 when there was no permit whatsoever for the operation of Mr. Kuc's rental property. Mr. Kuc was notified and came into compliance by October of 2022. Our office has received complaints regarding Mr. Kuc's property being operated as a transient rental instead of a short-term rental for which it is licensed for. Code Enforcement was recently able to obtain our own evidence when Officer Timmons found Mr. Kuc's rental property on the VRBO site being advertised as a transient rental instead of a short-term rental. Officer Timmons spoke with the property manager and asked for the listing to be removed from the VRBO site as a transient rental which was approximately four (4) to five (5) days later. As of right now, Mr. Kuc is complying.

Mr. Sweeny: Okay. So, is he in compliance as of now?

Mr. Ferris: As of right now, he is, yes.

Mr. Sweeny: Okay. Well, then we will move along quickly unless anybody has any questions?

Mr. Schneider: If this man has been a repeated offender, there is nothing to prevent him from being a repeat, repeat. Is there anything that we can do to stop him?

Mr. Sweeny: Mr. City Attorney?

Mr. Blocker: Absolutely, in cases like this, we want to deal with what's in front of the board today. Basically, if this individual comes into compliance, they can tomorrow go out of compliance again. There's nothing we can do to stop someone from not complying with the law. What we can do is hold them accountable when they don't.

Mr. Schneider: We can't stop him from complying, you said?

Mr. Blocker: That's correct.

Mr. Schneider: Well, then, if the guy continues to violate, what can we do?

Mr. Blocker: If he continues to violate, the board can hold him accountable by either following the rules or assessing fines. It sounds like in this case he was in violation but is now in compliance. This board has a broad discretion and can decide to hold him accountable or give him an opportunity to see his future actions. The board can hear the evidence that's presented, and you all are a judge, jury, and executioner.

Mr. Schneider: Okay. So, what we're saying then as a board, do we have the discretion, if this happens again, to fine him?

Mr. Blocker: That's correct. Yes, sir. Again, we wanted to see what the specific infraction was at that time. If it's the same infraction or if it's a different infraction.

Mr. Schneider: How long has this been going on, Mr. Ferris?

Mr. Ferris: Since July of '22.

Mr. Sweeny: Mr. Ferris, it seems that he did come into compliance after he was notified on 07/25/22. He came into compliance on 10/10/22, and then, on May 24th, 2023, he was out of compliance. Is that correct?

Mr. Ferris: That's correct. The first violation was having no permit whatsoever, and the second violation is for operating a transient rental while being only permitted to operate a short-term rental.

Mr. Sweeny: Mr. Ferris, correct me if I'm wrong, or City Attorney Blocker, are these two different violations?

Mr. Ferris: Yes, they are.

Mr. Sweeny: So, this is a different issue, and it looks like he quickly tried to come into compliance. I recognized this is the second time, but it looks like it's for something different. Now that he is complying, and we are aware of this violation. If he continues to violate, then I could see us coming back in July or whenever.

Mr. Schneider: I'm just asking the question because I don't want us to lose sight if he comes back in three months and suddenly, he's a repeat.

Mr. Sweeny: Right. If he goes back on Airbnb tomorrow, and let's say the board meets on July 27th, but on the 26th, he takes it down and says, "Oh, I'm in compliance," I think at that point we have an opportunity because he is in violation for the same thing a second time to retroactively look at this and assess fines.

Mr. Blocker: Mr. Chairman, we cannot go back retroactively to address, but the Code Board can say, "Listen, we've been dealing with this for a while, you are playing games here". You want to make sure when you administered the punishment, whatever it is, it's forward, it's not going back, it's not cumulative. There has been a pattern of behavior, but the issue we have is the one in front of us today.

Mr. Lovett: Is there any way that we can possibly send a warning to him, that if he does go out of compliance again, fines are going to start immediately, as soon as he goes out of compliance?

Mr. Blocker: Generally, this board is supposed to hear facts specific to what is in front of you, so I would have caution. Now, I don't think there is anything wrong with code enforcement telling him, "Hey, this board is not looking to provide you an opportunity to continue this type of behavior."

Mr. Schneider: I asked the questions regarding penalties because the city has a limit to the number of these transient rental properties.

Mr. Blocker: I think you bring up a great point, Mr. Schneider. The board could recommend the commission to build in a mechanism where these licenses for rentals are revoked. There's some litigation based on the ordinance, but it might be worthwhile making a recommendation to the commission on that.

Mr. Law: The city manager reserves the right to remove a business tax receipt if there's a valid license. I spoke with the city manager in detail and if this happens, we will ask this board to weigh the case individually. So, it's a panel of seven and not one individual making the decision. We have recently started going after business tax receipts that haven't been paid with a notice that, "Your business tax receipts will be removed, and you'll no longer be able to conduct business." There is a provision where the city manager can remove a business tax receipt. once My recommendation to the city manager was to let this board inform the city manager to remove, that way, it's just not one person making a simple decision.

Mr. Blocker: Just to come back to the point. So, we're really talking about two different things. We're talking about, one is a fine. So, this board's ability to levy a fine for the specific incident in front of it. The other part of that was what Mr. Schneider just brought up which is, you can lose the license administratively through the board. That could be a cumulative effect.

Mr. Lovett: Can we send a letter to him and let him know if he goes in violation again, we are going to come down on him.

Mr. Law: We can do that. The wording will be, "As you elected not to show up at the code enforcement board meeting to discuss your property, this is your last warning. Any further action in violation of Section 3.09, I believe it is, will result in an immediate convening of the code enforcement board outside of its normal operating time."

Mr. Sweeny: Do we have a motion?

Motion: Letter of warning to Mr. Kuc informing him of any further violation of section 3.09 will result in an immediate convening of the Code Enforcement Board outside of its normal operating time. **Moved by Mr. Lovett, seconded by Mr. Pritchett, passed 7-0** by the board by unanimous voice-vote.

Mr. Sweeny: Moving on to new business B. A notice to appear to Karen Pitts, at 56 Willow Drive for violation of the floor remodel administrative code, the development design, and improvement standards rights of way.

Mr. Ferris: This complaint was generated by one of our city officials back on May 9th, 2023, regarding a car port that was not permitted and the addition of a second driveway that did not receive a permit from Public Works. Contact was made in person with the homeowner regarding the violations. On 05/10/23, I sent a notice of violation via certified mail to the homeowner. The homeowner did come by the Building Department on 05/10/23 to obtain some paperwork and requested information on how to proceed. A door hanger with my information was placed on the homeowner's front door on 05/23/23 to contact me so I could get an update on the status of the violations. The homeowner called me later that afternoon on May 23rd and advised me that he had hired a lawyer. On May 30th, Attorney Whitehouse called the city staff to obtain some violation paperwork, and what he needed to do.

Mr. Schneider: Mr. Ferris, has the driveway been corrected?

Mr. Ferris: No, it hasn't.

Mr. Schneider: How over the 18-foot limit is it?

Mr. Sweeny: This was all one driveway at one point, and then he just added more?

Mr. Ferris: Yes, and a second driveway was added.

Mr. Law: I'm going to take over this conversation if I may. In 2018, the city commission ordered me to change the code to limit the driveways and rights of ways to 18 feet with a 5 by 5 flair. The intent of that code was to limit the continuous paving of the city's rights to way and its ability to hold stormwater. As it's the city's right of way, the city public works department is the issuing agency of any permits of that. Well, that agency cannot issue the permit because no agency can violate its own code, so a variance was the proper avenue for this driveway alone. They have been informed, their lawyer was informed, they have elected to do nothing at this time. They're not here to even explain themselves. So that explains the driveway. The structure itself is a building code issue and a Zoning Code issue. It meets the definition of a building because it has a roof designed for shelter of people or equipment. It would be required to follow the same setback as everything else in the city.

Mr. Schneider: Does it meet hurricane standards?

Mr. Law: We have not received any documentation on engineering on that structure currently.

Mr. Sweeny: Is this on the opposite side of the house?

Mr. Ferris: Yes.

Ms. Odom: A question to Mr. Ferris or Mr. Law. The cover is a lean-to, isn't it? It's not attached to the house, correct? I'm just asking.

Mr. Law: That brings up another code.

Ms. Odom: It's where I was going with that.

Mr. Law: Technically, by this City's land development code, you need 10 feet between adjacent structures. The building code has no opposition to a single-family residence as far as distance or structures, but the Zoning Code does. This would require full engineering. This is a prefabricated metal structure that's usually standardized from Carolina Carports, or a company of that magnitude, and it comes with the State of Florida engineering if it would have been permitted. It would have undergone a zoning review to look for lot coverage, impervious surface, driveways, and at the same time, the public works department, who are now the new city engineering, would have been looking at development for drainage. Based on the fence as a property line which is always a good indicator but not always. It's close to that property line.

Mr. Mariutto: This carport thing, is it a permanent structure?

Mr. Ferris: Yes.

Mr. Sweeny: I don't think the hiring of an attorney forbids us from taking action?

Mr. Law: You're correct, sir. They've been duly notified by several visits, certified mail, this board is well within its authority to require the removal by a certain date out of the right of way or the structure. Now, I reserve, without the board, I can order the removal of the structure, but in all fairness, this is a compounding case with multiple codes. It would seem prevalent that this board weighs on the decision.

Mr. Sweeny: It looks like he's had an attorney now for over a month. Has he reached out to the City Attorney, or has this Attorney reached out to anyone?

Mr. Law: I spoke to Mr. Whitehouse informally. I don't know if he's officially been hired, I know he was looking into it. Then, Mr. Whitehouse was called into the public works department to ask for a right of way permit where he was told, "You can't. You're over 18 feet. The city doesn't have the authority to do that without a variance." Other than that, I think that's the last time we heard from him, and no other action has been taken by the applicant.

Mr. Blocker: Mr. Chairman, I have not heard from Mr. Whitehouse on this issue. I have on some other matters, but not this one specifically.

Ms. Odom: I'm just going to ask, was Mr. Whitehouse informed that we were meeting today? Do we know that? I'm just asking.

Mr. Ferris: A certified mail was sent to the residence.

Mr. Sweeny: We normally wouldn't contact the attorneys because that's a private matter.

Mr. Schneider: How long has this been going on, Mr. Ferris?

Mr. Ferris: It started May 9th. On May 23rd I left a door hanger, and that's the last contact I had with the homeowner when he said he hired a lawyer.

Mr. Lovett: Is there any way for the car port or the driveway in its current condition to be brought into code through a variance or anything? Is that structure so out of code that it must come down?

Mr. Law: No, Sir. A variance would have been the appropriate procedure when they were first notified.

Mr. Lovett: Even for the car port?

Mr. Law: Well, the variance would only allow the zoning. The building code would still take its way after it got through zoning. The building code has no objection to zero lot lines. There are provisions for it regarding fire separations.

Mr. Sweeny: Members, any other questions? How many violations are we looking at here, three?

Mr. Ferris: Two.

Mr. Schneider: The driveway on this side of the house is out of compliance.

Mr. Ferris: Definitely.

Mr. Schneider: The driveway on the other side of the house, is that in compliance or out of compliance?

Mr. Law: No. Pre-existing driveway is part of the code. We don't mess with it, but obviously, this is a new one, and I'm going to go back and give the board a little bit of information with archived imagery. I think this was a recent change in the last year in the aerial imagery of this property.

Mr. Lovett: Concrete to pavers, took out the concrete and put in pavers?

Mr. Law: It looks like they constructed the carport along with the additional driveway within the last year based on aerial imagery from the county.

Mr. Schneider: Yes, but the driveway in front of the garage door, if you look at that driveway, it's a 16 feet door. Any good construction guy can tell you that, and there are approximately two and a half feet on either side, which means that the driveway is approaching 19 or 20 feet.

Mr. Law: Keep in mind, on private property, that's subjected to the impervious surface ratio requirements. We're discussing right now the rights of way, the city rights, but yes.

Mr. Schneider: Well, down at the right of way, it's the same way, Mr. Law.

Mr. Law: Right. There's an exorbitant number of existing rights of way in the city that predate the code that we're not asking to act on. It's only when they create an additional right-of-way entrance through the city-owned property that we take objection to.

Mr. Sweeny: Alright, members. We have two violations. We can either take them up together, or we can break them up, whichever you guys want to do. Take them individually or put them together?

Mr. Schneider: I think we're at more than two.

Mr. Sweeny: They've only been notified for two, right?

Mr. Ferris: Yes.

Mr. Sweeny: We're only here for two.

Mr. Law: Maybe we can simplify and say, zoning violations, and building code violations.

Mr. Sweeny: Okay. Alright, members. Let's talk Zoning Code violations first. I think our max is \$250 a day.

Mr. Pritchett: I'd love to make a motion to start to fine them \$250 a day until abolished and then cleared.

Mr. Sweeny: The Zoning Code. Does that give you enough time to start, or should we give you like until Friday to start the clock? When would you like the clock to start on the Zoning Code violation?

Mr. Law: In an abundance of caution and good city spirit, I would like the board to give ten days to come into compliance with the city.

Mr. Sweeny: That's about 10 days. They have until July 7th to come into compliance. Tell me if I'm wrong. We will notify them that they have until July 7th to come into compliance with the city Zoning Code, and after the 7th, a fine of \$250 a day will be exercised against them.

Mr. Schneider: I will second that motion just for the purposes of discussion.

Mr. Sweeny: Okay. A motion has been seconded. Now, let's discuss. I will just say for my two cents, again, no one has asked. If the staff asked us to grant some leniency, and my guess is just to get paperwork things done, and we've got a holiday in between, if they need the 10 days, that's why I would probably vote against that, but I would go with the staff.

Mr. Pritchett: He's already been notified he's got a violation.

Mr. Sweeny: Yes, sir.

Mr. Pritchett: What's the problem? He's been notified, he hasn't done anything, have a good day. Start pegging money.

Ms. Odom: I don't disagree with you at all, it's just that he was notified of the violation, not the consequences. If we had notified and said, "If you don't come in compliance, we're going to fine you."

Mr. Pritchett: He's not here, is he?

Ms. Odom: No, I'm agreeing to disagree, I guess, is what I'm saying. I think for the convenience of the board, or of the staff, I'd be leaning to give them more time. But we could have done it yesterday. I would have been happy.

Mr. Lovett: Time will benefit you, correct?

Mr. Law: It's not so much me, I mean...

Mr. Pritchett: Not you, I meant the city.

Mr. Law: The board will make whatever decision it wants and enforce it obviously. We must, in my opinion, and this is only my opinion, show some compassion. They are human; they made a mistake. The structure requires a variance to be applied for, or it needs to be removed along with the right-of-way infraction. We must allow a resident enough time to remove the structure. Now, do you want to levy a fine starting tomorrow, and then he or she comes back or their Attorney and negotiate the fine? That's up to this board. In light of July 4th...

Mr. Sweeny: America.

Mr. Law: Yes.

Mr. Sweeny: I'm going to call the question on this one. Okay? Unless there's further debate. All those in favor of beginning the \$250 fine immediately for violation of the Zoning Code, say aye.

Motion: Zoning violation, a fine of two hundred and fifty dollars (250) to begin immediately, **moved by** Mr. Pritchett, **seconded by** Mr. Schneider, motion **denied** 5-2 by voice-vote.

Mr. Schneider: I will make a motion being that the previous motion got voted down that on July 7, we'll begin a fine of \$250 per day until the issues are totally resolved, the zone issue.

Mr. Sweeny: This is for the Zoning Code.

Mr. Lovett: I'll second.

Mr. Sweeny: Second. Members, any comments, or questions? Brian, I have a question. When we send these letters to fines, is staff time also a part of the fine?

Mr. Law: About a year and a half ago, we provided the board with the number of hours spent on me, Ms. Lacey, and then the Code Enforcement Officer.

Mr. Sweeny: Listen, Attorneys aren't cheap. The fact that we must have our Attorney here, I think that should also come into play when we must spend our time doing these things.

Mr. Law: We'll make sure the attorneys are included for the next board meeting.

Mr. Sweeny: Will that be included in these fines?

Mr. Law: Before you set the fine, we give you the option of staff time. The board sets the fine if it's \$250 a day, then that's just what it is because that is a state law. If they go to negotiate the total fine, like some of the ones we have had. Then we will bring that to you where you can weigh that decision if you choose to.

Mr. Sweeny: Very good. Yes, please have that available at the next meeting.

Mr. Law: Yes, sir.

Mr. Sweeny: Alright. We've got a motion on the floor for violation of the Zoning Code, \$250 a day beginning July 7th. We have a second. Any other questions or comments? Do you have a question? Yes, ma'am.

Ms. Odom: I just have a question to clarify that. When Mr. Law says that when you started this 7/7, I thought we would go to 7/7 and then we'll start after that. I just want clarification. Is this going to start on the 7th, or start on the 8th?

Mr. Sweeny: Yes. They have until the 7th to comply, then it starts on the 8th.

Ms. Odom: I just wanted that clarification. Thank you.

Mr. Law: Also, if the applicants do decide to apply for a variance, we'll put a holding pattern on code enforcement until the Planning and Zoning Board has a chance to weigh the case. If they do not approve it, then it starts immediately the following morning.

Mr. Sweeny: Thank you for the clarification. Alright. Members, all in favor of the motion, say aye.

Motion: Zoning violation (Driveway), fine of two hundred and fifty (250) dollars a day to begin on July 8th, 2023, if not corrected by then, hold placed on fine if variance applied for, **moved by** Mr. Schneider, **seconded by** Mr. Lovett, **passed 6-1** by the board by voice-vote.

Mr. Sweeny: Alright. Let's move on to the building code violation. Open for any motions. Then I'll go ahead and motion that we allow them until July 7th to come in compliance with the building code, at which point, if they're not in compliance at 11:59 by the 7th, beginning on the 8th at midnight, a \$250 fine per day be levied against them for violation of the building code. Hearing a second? Any discussion? Questions? All those in favor of the motion, say aye.

Motion: Building violation (Car port). If they're not in compliance at 11:59 by the 7th, beginning on the 8th at midnight, a \$250 fine per day be levied against them for violation of the building code. **Moved by** Mr. Sweeny and **seconded by** Ms. Odom, **passed 7-0** by unanimous voice-vote.

Mr. Ferris: I would like to address the board on the Shasta Trailer. It was removed within a few days after our last board meeting, so that has been resolved.

Mr. Sweeny: Whatever happened, I think that Mr. Osteen had an issue. He was out of compliance with the code. What has ever happened with that one?

Mr. Law: The Planning and Zoning Board has granted a variance. Mr. Brown, the city's building inspector/plan examiner, is reviewing the plans and we will be working with the residence on opening the building up so we can inspect what's mandated.

Mr. Sweeny: I will ask this for old times' sake. The building there on A1A with the tarps, and the stairs, and all the guns that were traded, and all that stuff. Where are we on that one?

Mr. Schneider: Johnston.

Mr. Blocker: Mr. Chairman, in that case, a lawsuit has been filed, they initially, potentially hired an Attorney who asked for an extension, we're past that now, so new evidence has come to light that could make this more legally challenging. There may be a homestead on there, there are some disputes about that, but we have not heard from their Attorneys. We are past that, that's on my to-do list this week. We've been trying to establish whether there's a homestead probably going on, but as you can imagine, it's a time-consuming enterprise.

Mr. Pritchett: If they're not living there, that's not being homestead. That's one. Number two, it's commercial property.

Mr. Blocker: We are tracking some of the issues there and Mr. Law and I are working, but there have been some wrinkles that have extended some of the issues.

Mr. Ferris: No other business.

Mr. Sweeny: Okay. Have a great 4th of July, everyone. Be safe out there.

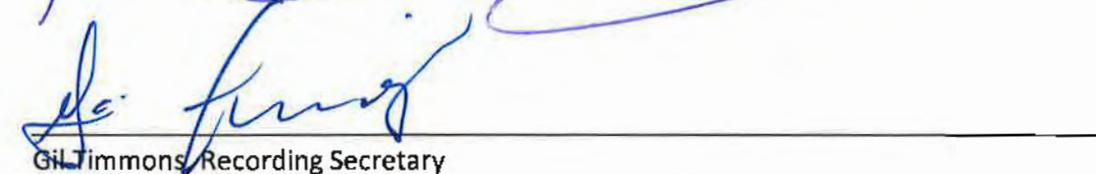
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VI. BOARD COMMENT

VI. VII. ADJOURNMENT



Kevin Mr. Sweeny, Chairman



Gil Timmons, Recording Secretary

(THIS MEETING HAS BEEN RECORDED IN ITS ENTIRETY. THE RECORDING WILL BE KEPT ON FILE FOR THE REQUIRED RETENTION PERIOD. COMPLETE AUDIO RECORDING CAN BE OBTAINED BY CONTACTING THE CITY MANAGER'S OFFICE AT 904-471-2122.)