



**A REGULAR MEETING MINUTES
CODE ENFORCEMENT BOARD
AUGUST 2, 2016**

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

A REGULAR MEETING of the Winter Garden Code Enforcement Board (CEB) was called to order by Chairman John Benoit III at 6:15 p.m. in the City Hall Commission Chambers, 300 West Plant Street, Winter Garden, FL. The Pledge of Allegiance was recited.

DETERMINATION OF QUORUM

A quorum was declared present at 6:15 p.m.

MEMBERS PRESENT:

Chairman John Benoit III and Board Members: Johnny Clark, Jack Litteral, Ron Sikes, Marvin E. Vasquez, and Bruce Woloshin

MEMBERS ABSENT:

Vice-Chairman David Buckles (excused)

ALSO PRESENT:

Board Attorney Dan Langley, Community Development Director Steve Pash, Planning Consultant Ed Williams, Code Compliance Officer Tom Knappman, Code Compliance Officer Art Espinosa, Police Chief George Brennan, Police Officer Peter Keane, Police Officer Tom Resko, and Recording Secretary Kathleen Rathel

2. CONSENT AGENDA

A. SWEARING IN OF PARTIES TO TESTIFY

CEB Recording Secretary Rathel swore in Community Development Director Steve Pash and members of the audience who will be presenting testimony or speaking to the Board.

B. APPROVAL OF MINUTES

Approval of minutes from the regular meeting held July 5, 2016

MOTION: Board Member Clark moved to approve the July 5, 2016 meeting minutes. Seconded by Board Member Sikes, the motion carried unanimously 6 - 0.

NOTE: Board Member Vasquez recused himself from voting on Case #15-053 for possible conflict of interest.

3. HEARINGS ON STATEMENT OF VIOLATIONS PURSUANT TO NOTICES OF HEARINGS

B. NEW BUSINESS

1. CASE # 15-053 – 17901 Marsh Road, Winter Garden, FL

Community Development Director Steve Pash

Sec. 118-10 Restrictions on Uses

Sec. 118-209 Voluntary Annexation

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CASE # 15-053.

Community Development Director Pash turned the podium over to Andrew Hand with the law firm of Shepherd, Smith and Cassady, P.A. to be legal counsel for the City's code enforcement staff and prosecutor on this case.

Attorney Hand called Steve Pash to provide testimony. Mr. Pash gave a brief history of the property located at 17901 Marsh Road which was annexed into the City in June of 2014. The application contained a statement that the applicants lived at the property and rented their home for events. Applicants stated they had been approved to hold 10 to 12 events per year. The City stated the permitted use would be allowed to continue since it had been allowed by Orange County. After the annexation process started, the applicants came in to discuss issues with neighbors and Orange County regarding a road on the west side of their property line. During the same meeting the applicants noted they had received a posting from Orange County Code Enforcement. After the annexation, more events were held and complaints were received regarding noise, parking and trespassing. Upon investigation it was discovered the use had not been approved or allowed by Orange County and that Orange County Code Enforcement was in the process of moving forward with violation notices for conducting a business or commercial activity in a residential district. A Cease and Desist letter and Notice of Violation were sent to the applicants in June of 2015. A second Cease and Desist letter along with Notice of Violation and Notice of Hearing were sent on April 26, 2016. The June 7, 2016 Code Board meeting was cancelled so a new Notice of Violation and Notice of Hearing was issued and sent on June 23, 2016 and scheduled for a July 5, 2016 Code Board meeting. Mr. Pash requested the Board issue a Findings of Fact and Conclusions of Law and fine the property \$250.00 with further events being processed as repeat offenders.

Attorney Hand formerly introduced items entered into evidence. These items were included in the August 2, 2016 Code Enforcement meeting packet (*Exhibit 1 available upon request*).

Respondents Albert G. Baughman, Steffani J. Baughman, and Joseph Stewart, were present and represented by legal counsel, James Gustino.

Attorney Hand called Planning Consultant Ed Williams to provide testimony. Mr. Williams, President of Williams Development Services located at 920 S. Delaney Ave., Orlando FL, submitted his curriculum vitae (*Exhibit 2 available upon request*). Mr. Williams is under contract to provide planning and consulting services to the City of Winter Garden but was acting as the Community Development Director during the time of the annexation of 17901 Marsh Road. He testified on the issues regarding the road and right-of-way on the western side of the property and the non-permitted use of the property to host events. Mr. Williams recommended the Board find the property to be in non-compliance with City code and recommend the event usage be terminated.

Attorney Hand called witnesses and the Board heard the sworn testimonies of Winter Garden Police Officer Peter Keane, Winter Garden Police Office Tom Resko, neighbors Judy Cannon,

Scott Boyd, William Watson, and Susan Yawn concerning the noise, parking issues, traffic problems, and number of events.

Community Development Director Pash was called and entered into evidence the Orange County Violation Notice with photos dated April 18, 2004 created by Orange County Code Enforcement for conducting a business or commercial activity in a residential district (*Exhibit 3 available upon request*).

Attorney Gustino cross-examined each witness after their testimony.

Attorney Gustino addressed the Board stating the respondents did their due diligence when they purchased 17901 Marsh Road and fully disclosed the Orange County issues during the initial annexation application process. He stated his clients made efforts to try and resolve the concerns brought to their attention.

Attorney Gustino called respondent, Steffani Baughman, to testify. Mrs. Baughman stated they are full-time residents with a part-time event venue. They wanted to annex due to an issue arising from an incident on April 26, 2014 when a neighbor blocked the roadway and noted the response time between the Orange County Sheriff and Winter Garden Police. She stated that in their meeting with Mr. Pash they fully disclosed their code issues with Orange County. Attorney Gustino brought up the IRS regulation that the Baughman's ran their business under. Mrs. Baughman stated that based on an IRS regulation if you have no more than 15 events per year you are not required to acquire a business permit. She testified that they complied every time an issue came up regarding parking and the noise and stated it would be a hardship if they could no longer run this business as they invested all their savings in this project. Mrs. Baughman supplied copies of their Orange County and City of Winter Garden Business Tax receipts (*Exhibit 4 available upon request*).

Attorney Hand cross-examined Mrs. Baughman regarding her conversations with Officer Ortiz of the Orange County Code Enforcement Department and the violation issues with their business where Officer Ortiz stated the Baughman's needed to cease business and remove their website.

Attorney Gustino called respondent Albert Baughman to testify regarding what was discussed at the meeting with Mr. Pash during their annexation application and the property's usage. A letter from a neighbor, Mr. R. Randall, was submitted in support of the wedding venue (*Exhibit 5 available upon request*).

Mindy Joseph, 3313 White Blossom Lane, Clermont Florida, was sworn in by recording secretary Rathel. Ms. Joseph is the daughter of the respondents and reaffirmed events that happened in 2014. They also lived at 17901 Marsh Road and were threatened by a neighbor, Mr. Watson, to not use the right-of-way and the Orange County Sheriff's department was called. She stated that they emailed the City multiple times to set up meetings.

Attorney Hand made his closing statement by stating this is a land use issue and the fact that the respondents were under a duty to provide the City information that was not received. Mr. Hand clarified that the City Business Tax is not a license and that the respondents are currently in violation. He stated the City recommends the Board find the respondents in violation of Ordinance 118-10 and 118-209 and assess a \$250.00 fine. Any further violations would be prosecuted as continuing violations.

Attorney Gustino made his closing statement by stating the Baughman's did everything they could possibly do by fully disclosing the nature of their business, the ongoing issues with Orange

County, and what was happening at their property. He further stated that there was no space on the application to disclose any issues.

Questions and Discussion

Board Member Benoit asked how long the respondents have lived at that location. Mrs. Baughman stated the property was purchased in June of 2012 and they started the business in early 2013.

Board Member Sikes questioned the permitted uses in the NZ (No Zone) district. Mr. Pash stated no particular uses are allowed in a No Zoning district but that area of the City has an urban village land use designation and plan development would require UVPUD approval for specific uses. This area is regarded as residential. No variance or UVPUD rezoning has been received. Attorney Langley clarified that any legally permitted active use that existed on the property at the time of annexation would be allowed to continue under the NZ designation until such time as developed.

Board Member Sikes stated he carefully reviewed the items submitted and listened to all testimonies. He stated the respondents have known about the problem for well over two years with the City having taken over one year to bring this item before the Board but the respondents did not take the steps necessary to help with what they might be allowed to do with their property. The first notice of violation from Orange County was dated April 22, 2014 with the annexation occurring in June of 2014. At that time there was at least one violation against Section 118-10 and the level of responsibility imposed upon the respondents to know what they can do, whether they choose to hire a lawyer or not, and they did not take the steps necessary to avoid the point where there is a violation. They did not apply for a variance, special exception, or UVPUD zoning. He stated the Boards responsibility is whether the code was being violated by the property uses. The first notice of violation from Orange County was in April of 2014, the annexation in June of 2014, and the first Cease & Desist letter from the City on June 10, 2015. He stated this is a residence without the kitchen facilities, restroom facilities, or parking that any normal commercial event business would have for this use. The respondents' business website information claims they can have up to 150 people per event and respondents want to make this a functioning business. Board Member Sikes stated his view is that this area is not zoned for this type of functioning business. He also noted from the testimony that there would be 12 to 15 uses per year but the timeline narrative provided by Mrs. Baughman showed that between August 9, 2014 and July 11, 2015 there were 26 events which takes this property past a residential use with occasional ancillary functions. He believes the City has met the burden of proof and that the respondents have failed to show any justification for the violations.

MOTION: Based on the testimony of all parties, evidence presented, and the Findings of Fact [in Case 15-053], Board Member Clark moved to find the respondents are in violation of Sections 118-10 and 118-209 and fined \$250.00. Motion seconded by Board Member Sikes.

Attorney Langley clarified the recommendation from the City was to establish the order of non-compliance and a \$250.00 fine based on the violations already established. Any further violations would be prosecuted as a repeat violation and ask for a maximum of \$500.00 per violation. **Board Member Sikes withdrew his second for further clarification.**

Attorney Langley restated the MOTION made by Board Member Clark: Find the property and property owners in non-compliance, a Finding of Violation of Sections 118-10 and 118-209 based on evidence presented in the record, establish a fine of \$250.00 based on the violation of those code sections that have already occurred, and further direct the property owners to cease the ongoing use that has been determined to be in violation which is the business of conducting events on the property as presented in the evidence, and any further violations would be considered a repeat violation.

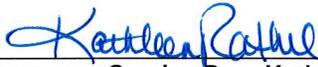
Motion seconded by Board Member Sikes and carried unanimously 5-0 with Board Member Vasquez being recused.

4. ADJOURNMENT

There being no further business to discuss, Board Member Litteral motioned to adjourn the meeting at 9:12 p.m. Seconded by Board Member Clark and carried unanimously 6 - 0.

ATTEST:

APPROVED:



Customer Service Rep. Kathleen Rathel



Chairman John Benoit III

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Harold E Vasquez, hereby disclose that on Aug 2, 20 11:

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Counsel for defendants, James Gustino, represented me on an unrelated litigation.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

Aug 2, 2011
Date Filed

Harold E Vasquez
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.