

SPECIAL MAGISTRATE MINUTES
COUNCIL CHAMBERS
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
FEBRUARY 23, 2022

THE SPECIAL MAGISTRATE HEARING of the City of Port Orange was called to order by Special Magistrate Fuller at 9:00 a.m.

PRESENT: David Fuller, Special Magistrate

ALSO PRESENT: Dena Joseph, Code Compliance Inspector
Dennis Boehmer, Code Compliance Inspector
Robert Kuhn, Code Compliance Inspector
Shelby Field, Assistant City Clerk

Attorney Overview of Special Magistrate Code Enforcement Process

Special Magistrate Fuller provided an overview of the code enforcement process as there were members of the public present.

Consideration of Minutes

Special Magistrate Fuller approved the February 9, 2021 meeting minutes as presented.

Oaths

Code Compliance Inspectors Dena Joseph, Dennis Boehmer, and Robert Kuhn were sworn in by Special Magistrate Fuller.

A. FORMAL HEARING (COMPLIANCE OR NON-COMPLIANCE)

3. CEB Case No.: 22-0015

Respondent: Sylvia D. Morris

Theresa D. Frees

Address of Violation: 5457 Pineland Avenue, Port Orange, FL 32127

Code Officer: Dena Joseph

First Notified: 1/4/2022

Compliance: Yes

Cited for violation(s) - Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Chapter 42 (Nuisances), Article II (Garbage , Junk and Undergrowth), Section 42-32 Storage of vehicles, furniture, etc. of the City of Port Orange Code of Ordinances.

Chapter 5 (Plumbing Facilities and Fixture Requirements), Section 505 (Water System), 505.1 (General), of the 2021 International Property maintenance Code as adopted per Chapter 14, Article II of the City of Port orange Code of Ordinances.

Dena Joseph, Code Compliance Inspector, was sworn in by Special Magistrate Fuller and requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

4. **CEB Case No.:** 21-2063
Respondent: Catherine Ptak
Address of Violation: 6223 Donna Circle, Port Orange, FL 32127
Code Officer: Dennis Boehmer
First Notified: 12/27/2021

Compliance: Yes

Cited for violation(s) - Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II (Garbage, junk and undergrowth), Section 42-26 (Cleanliness of property generally-duty of owner), (h) Abutting property owner maintenance of parkages.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

5. **CEB Case No.:** 21-1524
Respondent: Sean C Derwick
Rachel L Derwick
Address of Violation: 720 Pringle Road, Port Orange, FL 32127
Code Officer: Dennis Boehmer
First Notified: 9/10/2021

Compliance: No

Cited for violation(s) - 2020 Florida Building Code, 7th Edition, Section 105 (Permits), 105.1 (Permits Required), as adopted by Chapter 8, Article 1, of the City of Port Orange Land Development Code.

Dennis Boehmer, Code Compliance Inspector, was sworn in by Special Magistrate Fuller and testified as to the condition of the property, as well as the notice provided to the property owner. Photos and emails were submitted into evidence and accepted by Special Magistrate Fuller with no objections. The violation was to be corrected by January 31, 2022 by going to Port Orange City Hall and applying for a fence permit.

Sean Derwick, Property Owner, was sworn in by Special Magistrate Fuller and testified to never receiving emails from code enforcement.

Billy Wiggins, former neighbor, was sworn in by Special Magistrate Fuller and testified that he did not put up the fence in question. He stated there was a spoken agreement with Mr. Derwick

about the fence going up if it was along the property lines, but according to his survey it is 20 inches on his property. Mr. Wiggins stated after negative encounters with Mr. Derwick he sold the property in July 2021.

Mr. Derwick stated Suncoast Fencing put up most of the fence but after issues with setback requirements canceled the permit. He believes Mr. Wiggins put up some as well. Mr. Wiggins stated he did not construct any fence; he did put up a gate.

Ricky Westfall, current neighbor, was sworn in by Special Magistrate Fuller and testified to purchasing the neighboring property in June or July 2021. He was not aware the fence in question was on his property but learned immediately when he was approached by Mr. Derwick in a negative manner. Mr. Westfall had his own survey done and stated the fence is 20+ inches on his property.

Mr. Derwick provided background information on the fencing project and his interactions with the previous and current neighbors. He stated 100% of the fence is not on his property but he did pay Suncoast Fencing to construct the fence. Mr. Derwick asked for additional time to come into compliance.

Mr. Boehmer recommended the property owners be found in violation of the above referenced codes with the violations to be corrected by March 26, 2022 by going to Community Development at Port Orange City Hall and applying for a fence permit. In the event the property is not brought into compliance on or before the compliance date, and/or not maintained in a state of compliance, a daily fine in the amount of \$200.00 per day shall be imposed. Accused should be further ordered to contact the Code Enforcement Officer to arrange for a re-inspection of the property to verify compliance with the order. Mr. Boehmer requested any future violations under this ordinance be considered repeat. The cost sheet in the amount of \$60.44 was tendered into evidence and accepted by Special Magistrate Fuller with no objections.

Special Magistrate Fuller granted the recommendation with an amendment to include removing the fence. The property owner has until March 26, 2022 to go to Community Development at Port Orange City Hall and apply for a fence permit or remove the fence or a daily fine in the amount of \$200.00 per day shall be imposed. Costs in the amount of \$60.44 were awarded to the City.

6. CEB Case No.: 22-0050

Respondent: 7-Eleven (Business Name)

Phil Cury & Assoc. Inc, Property Owner

Address of Violation: 1632 Taylor Road, Port Orange, FL 32128

Code Officer: Robert Kuhn

First Notified: 1/10/2022

Compliance: Yes

Cited for violation(s) - Chapter 42, (Nuisances), Article V (Unsafe Conditions), Division 2 (Nuisance Trees), Section 42-104 (Nuisance abatement requirements) of the City of Port Orange Code of Ordinances.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

7. **CEB Case No.:** 21-1696

Respondent: 2017-2 IH Borrower LP

Address of Violation: 5334 Coquina Shores Lane, Port Orange, FL 32128

Code Officer: Robert Kuhn

First Notified: 10/12/2021

Compliance: Yes

Cited for violation(s) - Chapter 3 (General Requirements), Section 304 (Exterior Structure), 304.13 (Window, skylight and door frames) of the 2018 International Property Maintenance Code as adopted per Chapter 14, Article II of the City of Port Orange Code of Ordinances.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request

B. ORDER IMPOSING FINE/LIEN

8. **CEB Case No.:** 21-1330

Respondent: Nath Florida Franchise Group

Address of Violation: 3811 Nova Road, Port Orange, FL 32127

Code Officer: Amanda Bonin

First Notified: 10/26/2021

Compliance: Yes

Cited for violation(s) - City of Port Orange Land Development Code Chapter 15 Signs, Section 3 General Provisions (d) Construction and maintenance standards. All permitted signs shall be constructed and maintained in accordance with the following standards: (2) Copy. All copy shall be maintained so as to be legible and complete. (3) Structure. Signs shall be maintained in a vertical position unless originally permitted otherwise, and in good and safe condition at all times. (4) Damage. Damaged faces or structural members shall be replaced in a timely manner.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

9. **CEB Case No.:** 21-1938

Respondent: Kelly Lynn Gonzalez

Emmanuel Martin Gonzalez

Address of Violation: 419 Leslie Drive, Port Orange, FL 32127

Code Officer: Dennis Boehmer

First Notified: 11/19/2021

Compliance: Yes

Cited for violation(s) - Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II (Garbage, junk and undergrowth), Section 42-26 (Cleanliness of property generally-duty of owner), (h) Abutting property owner maintenance of parkages.

Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

10. **CEB Case No.:** 21-2014

Respondent: Darrell & Sharon Blake

Address of Violation: 1157 Millbrook Avenue, Port Orange, FL 32127

Code Officer: Dennis Boehmer

First Notified: 12/9/2021

Compliance: No

Cited for violation(s) - Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Mr. Boehmer requested an Order Setting Fine/Lien as the property was not in compliance immediately as ordered in the previous hearing on January 12, 2022 by the Special Magistrate. The City retained vendor Mark Solomon Properties, who abated the violation(s) at the cost of \$256.00. A cost sheet for mailing and recording costs in the amount of \$122.16 was tendered and submitted into evidence without objection.

Special Magistrate Fuller found the property in non-compliance and awarded abatement costs of \$256.00 and mailing and recording costs to date of \$122.16. A lien is imposed on the subject property in the amount of \$378.16.

11. **CEB Case No.:** 21-1202

Respondent: Sally Powell Estate

Address of Violation: 1205 Sparton Avenue, Port Orange, FL 32127

Code Officer: Scott Allman

First Notified: 6/30/2021

Compliance: No

Cited for violation(s) - Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Ms. Joseph requested a continuation of the case to the April 13, 2022 Hearing. Special Magistrate Fuller granted the continuation request.

12. **CEB Case No.:** 21-1389
 Respondent: IH3 Property Florida LP
 Address of Violation: 820 Little Town Road, Port Orange, FL 32127
 Code Officer: Scott Allman
 First Notified: 8/3/2021

Compliance: Yes

Cited for violation(s) - Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

13. **CEB Case No.:** 21-1916
 Respondent: James E. Holloway
 Address of Violation: 170 Iron Gate Circle, Port Orange, FL 32129
 Code Officer: Robert Kuhn
 First Notified: 11/17/2021

Compliance: Yes

Cited for violation(s) - Chapter 3 (General Requirements), Section 304 (Exterior Structure), 304.13 (Window, skylight and door frames), of the 2021 International Property Maintenance Code as adopted per Chapter 14, Article II of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II (Garbage, junk and undergrowth), Section 42-26 (Cleanliness of property generally-duty of owner), (h) Abutting property owner maintenance of parkages.

Chapter 70 (Traffic), Article II (Stopping standing and parking), Section 70-48 Parking of recreational vehicles and equipment on residential premises (a) (c) (3).

Chapter 16 (Miscellaneous Regulations), Section 3 (Fences and Walls), (b) General Provisions, (4) Design and Maintenance of the City of Port Orange Land Development Code: (b)

Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

14. **CEB Case No.:** 21-1941

Respondent: Gwendolyn M. Johnson

Address of Violation: 12 Black Jack Circle, Port Orange, FL 32128

Code Officer: Robert Kuhn

First Notified: 11/22/2021

Compliance: No

Cited for violation(s) - Chapter 56 (Solida Waste), Article II (Collection and Disposal Service), Section 56-34 (Location of Containers) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Robert Kuhn, Code Compliance Inspector, was sworn in by Special Magistrate Fuller and requested an Order Setting Fine/Lien as the property was not in compliance on or before January 20, 2022 as ordered in the previous hearing on January 12, 2022 by the Special Magistrate. The City retained vendor Mark Solomon Properties, who abated the violation(s) at the cost of \$150.00. A cost sheet for mailing and recording costs in the amount of \$98.58 was tendered and submitted into evidence without objection.

Special Magistrate Fuller found the property in non-compliance and awarded abatement costs of \$150.00 and mailing and recording costs to date of \$98.58. A lien is imposed on the subject property in the amount of \$248.58.

15. **CEB Case No.:** 21-1941 (2)

Respondent: Gwendolyn M. Johnson

Address of Violation: 12 Black Jack Circle, Port Orange, FL 32128

Code Officer: Robert Kuhn

First Notified: 11/22/2021

Compliance: No

Cited for violation(s) - Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II (Garbage, junk and undergrowth), Section 42-26 (Cleanliness of property generally-duty of owner), (h) Abutting property owner maintenance of parkages.

Mr. Kuhn requested an Order Setting Fine/Lien as the property was not in compliance immediately as ordered in the previous hearing on January 12, 2022 by the Special Magistrate. The City retained vendor Mark Solomon Properties, who abated the violation(s) at the cost of \$106.00. A cost sheet for mailing and recording costs in the amount of \$98.58 was tendered and submitted into evidence without objection.

Special Magistrate Fuller found the property in non-compliance and awarded abatement costs of \$106.00 and mailing and recording costs to date of \$98.58. A lien is imposed on the subject property in the amount of \$204.58.

16. **CEB Case No.:** 21-1978

Respondent: Brian Allen Player

Address of Violation: 5217 Frederick Avenue, Port Orange, FL 32127

Code Officer: Dena Joseph

First Notified: 11/20/2021

Compliance: No

Cited for violation(s) - Chapter 70 (Traffic), Article II (Stopping, standing, and parking), Section 70-36 (Stopping, standing or parking prohibited in specified places) (a) (1) (k) (1), (2) & (3) of the City of Port Orange Code of Ordinances.

Chapter 70 (Traffic), Article II (Stopping, Standing, and Parking), Section 70-49 (Restrictions on abandoned or disabled vehicles), (c) Restrictions, (1) (a), (b) and (2) of the City of Port Orange Code of Ordinances.

Chapter 42 (Nuisances), Article II (Garbage , Junk and Undergrowth), Section 42-32 Storage of vehicles, furniture, etc. of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

2020 Florida Building Code, 7th Edition, Section 105 (Permits), 105.1 (Permits Required), as adopted by Chapter 8, Article 1, of the City of Port Orange Land Development Code.

Ms. Joseph requested an Order Setting Fine/Lien as the property was not in compliance immediately as ordered in the previous hearing on January 12, 2022 by the Special Magistrate. She requested a daily fine in the amount of \$250.00 per day beginning December 7, 2021 (the date the violation was first observed) and running until the property is brought into compliance as ordered in the Finding of Fact, Conclusion of Law & Order. A cost sheet for mailing and recording costs in the amount of \$98.58 was tendered and submitted into evidence without objection.

Special Magistrate Fuller found the property in non-compliance and awarded a daily fine in the amount of \$250.00 per day beginning December 7, 2021 (the date the violation was first observed) and running until the property is brought into compliance and mailing and recording costs to date of \$98.58.

17. **CEB Case No.:** 21-2051
Respondent: Allan R. Thompson
Address of Violation: 5827 Ridgewood Avenue, Port Orange, FL 32127
Code Officer: Dena Joseph
First Notified: 12/21/2021

Compliance: No

Cited for violation(s) - Chapter 42 (Nuisances), Article II (Garbage , Junk and Undergrowth), Section 42-32 Storage of vehicles, furniture, etc. of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II, (Garbage, Junk and Undergrowth), Section 42-26, (Cleanliness of Property Generally-duty of owner), (f) Garbage, waste, trash, etc. prohibited of the City of Port Orange Code of Ordinances.

Chapter 70 (Traffic), Article II (Stopping, Standing, and Parking), Section 70-49 (Restrictions on abandoned or disabled vehicles), (c) Restrictions, (1) (a), (b) and (2) of the City of Port Orange Code of Ordinances.

Ms. Joseph requested an Order Setting Fine/Lien as the property was not in compliance immediately as ordered in the previous hearing on January 12, 2022 by the Special Magistrate. She requested a daily fine in the amount of \$500.00 per day beginning December 21, 2021 (the date the violation was first observed) and running through and including December 27, 2021 for a total of 7 days as ordered in the Finding of Fact, Conclusion of Law & Order. A cost sheet for mailing and recording costs in the amount of \$90.72 was tendered and submitted into evidence without objection.

Special Magistrate Fuller found the property in non-compliance and awarded a daily fine in the amount of \$500.00 per day beginning December 21, 2021 (the date the violation was first observed) and running through and including December 27, 2021 for a total of \$3,500.00 and recording costs to date of \$90.72. A lien is imposed on the subject property in the amount of \$3,590.72.

18. **CEB Case No.:** 21-1900
Respondent: Maronda Homes LLC
C/O Scott Howard, Registered Agent
Address of Violation: 276 Farmbrook Road, Port Orange, FL 32127
Code Officer: Dena Joseph
First Notified: 11/12/2021

Compliance: Yes

Cited for violation(s) - Chapter 42, (Nuisances), Article II (Garbage, Junk and Undergrowth), Section 42-26 (Cleanliness of property generally - duty of owner), (d) (Maintenance of improved residential lots) of the City of Port Orange Code of Ordinances.

Chapter 42, (Nuisances), Article II (Garbage, junk and undergrowth), Section 42-26 (Cleanliness of property generally-duty of owner), (h) Abutting property owner maintenance of parkages.

Ms. Joseph requested a dismissal of the case as it is in compliance. Special Magistrate Fuller granted the dismissal request.

19. CEB Case No.: 21-1012

Respondent: J. Plummer Sherbino

J. Plummer Sherbino Rev. Living Trust

Address of Violation: 115 Fleming Avenue, Port Orange, FL 32127

Code Officer: Dena Joseph

First Notified: 5/26/2021

Compliance: No

Cited for violation(s) - 2020 Florida Building Code, 7th Edition, Section 105 (Permits), Section 105.1 (Required) as adopted per Chapter 8, Article I of the City of Port Orange Code of Ordinances: Failure to Obtain a Building Permit.

Ms. Joseph requested a continuation of the case to the March 9, 2022 hearing date. Special Magistrate Fuller granted the continuation request.

D. ADJOURNMENT – 10:13 a.m.



Special Magistrate Fuller