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## CODE ENFORCEMENT BOARD

### MINUTES

October 1, 2020

#### 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chair Chris Gibbs called the meeting to order at 5:31 pm and led the Pledge of Allegiance.

#### 2. ROLL CALL

Present: Chair Chris Gibbs, Vice Chair Sandra Michelson, Board Members Andrew Jones, James Shipton, Linda Palardy, Carl Weaver, Robert Lubber and George Bosch.

Also present: Building Official Tom Forbes, Planning & Zoning Growth Management Director Christy Fischer, Administrative Support Specialist Doreen Morales, City Attorney Morris Richardson, Council Member Andrea Young, the Respondent Jason Wadsworth, his Attorney Cliff Repperger of Whitebird Law, Professional Court Reporter Patricia A. Migliaccio and many members of the public.

#### 3. SWEARING IN OF THOSE PRESENTING TESTIMONY

Doreen A. Morales swore in those presenting testimony.

#### 4. NEW BUSINESS

##### Case No. 2020-0066

Violation of Section 2-94.	Emergency actions
Violation of Section 98-562.	Principal uses and structures
Violation of Section 98-565.	Prohibited uses and structures

Building Official Tom Forbes presented Case No. 2020-0066 for property located at 9075 Ellis Road and owned by Madison Holdings of Brevard, LLC, et al and turned the case over to Planning & Growth Management Director, Christy Fischer.

City Attorney Morris Richardson explained the process for tonight's hearing:

- Planning & Growth Management Director, Christy Fischer will present her case
- Respondent, Madison Holdings of Brevard, LLC., and his Attorney, Cliff Repperger, of Whitebird Law will present Respondent's case
- Residents will then address the Board
- Cross-examination is allowed
- Lastly, Code Board discussion, questions and rulings

Planning & Growth Management Director, Christy Fischer was sworn in and testified:

- Property was a Brevard County property and designated as IU (Light industrial)
- December 3, 2013 - property owner requested annexation into the City
- Provided history of zoning for the property and permitted uses
- Provided history of the Development Agreement (DA) between the City and Madison Holdings of Brevard, LLC.
- DA was in place to minimize impacts on residential neighborhoods (Falls of Sheridan)
- January 21, 2014 – City Council approved the DA
- February 4, 2014 – City Council approved an owner request for M-2 zoning (General Industrial), subject to restrictions of DA
- July 2020 – Complaints from neighbors began regarding large “dump piles” of trees and underbrush on the property with smoke from the burning of the debris in an incinerator
- Provided history regarding the Florida Department of Environmental Protection (FDEP) permits which the Respondent applied for
- Ms. Fischer stated the Respondent did not follow the correct process for a final site plan review
- Provided information and background on the prohibited uses of a “yard trash disposal facility” and an air curtain incinerator within the City limits

Director Fischer recommends a finding of violation of Sections 98-562. Principal uses and structures and Section 98-565. Prohibited uses and structures.

City Attorney Morris Richardson explained to the public these hearings are quasi-judicial, cross examination is allowed, formal rules of evidence do not apply, but they are allowed to ask questions of staff. The City is also allowed to ask questions.

Attorney, Cliff Repperger of Whitebird Law, 730 E. Strawbridge Avenue, Suite 209, Melbourne, FL 32901, stated he represents the Respondent, Madison Holdings of Brevard, LLC.

Attorney Repperger questioned Director Fischer regarding the DA and the three prohibited uses, the City's business tax receipt, zoning of M1/M2 and the zoning definition of agricultural activities and forest products.

Respondent, Jason Wadsworth of Madison Holdings in Brevard, LLC was sworn in and testified.

Attorney Repperger and Jason Wadsworth presented their case:

- In 2009 Mr. Wadsworth became the owner of the property at 9075 Ellis Road
- Mr. Wadsworth described his business, Universal Contracting and Construction and his desire to recycle land clearing debris and its conversion into firewood, mulch, top soil, etc.
- Explained the permit applications submitted to Florida Department of Environmental Protection (FDEP) and the required public notice in Florida Today newspaper
- Provided technical specifications on the air burner, how the incinerator works with explanations of on-site pictures
- There is no long term storage of land clearing debris; it's converted into other products to be used on other job sites
- Mr. Wadsworth is a multi-leveled general contractor, he's a constituent, grew up here, pays taxes and is thankful to provide more jobs within the City limits

City Attorney Morris Richardson asked Mr. Wadsworth what permit he applied for in January 2020. Mr. Wadsworth stated its FDEP description of the permit is a "yard trash disposal facility". Attorney Richardson asked if the site plan shows piles of yard trash as high as 60'. Mr. Wadsworth stated an engineer prepared the site plan and it would show piles of 60' yard trash, if he elected but he chose to use the firebox. Mr. Wadsworth stated the accumulation of trees and debris is from job sites. He is also clearing at 9075 Ellis Road and is not planting trees at 9075 Ellis Road. He will be burning offsite debris as well as debris from his own land clearing and does have a permit to do so.

Attorney Richardson questioned Mr. Wadsworth if he submitted a site plan review application request to the City to request a change or add any uses attached to the original DA. Mr. Wadsworth stated he did not make any requests to the City regarding a yard trash disposal facility with an incinerator operation on-site.

Board Member Luber questioned if Mr. Wadsworth notified the residents of the Falls of Sheridan of the burning. Mr. Wadsworth stated he did not notify the residents and he was required to put a public notice in Florida Today.

Board Member Jones expressed his knowledge of the history of the property and his concern for the residents and how Mr. Wadsworth did not include the City regarding the incinerator operations prior to moving forward.

Board Member Luber questioned Mr. Wadsworth on how he runs the incinerator. Mr. Wadsworth stated the Firebox is started with a lighter on the vegetation, fuel and air ignite the fire. He stated there are no propane tanks on-site.

Board Member Weaver questioned Mr. Wadsworth as to who granted him permission to use the incinerator at this location. Mr. Wadsworth stated FDEP granted him the permission.

Planning Director Fischer stated Tom Forbes is the Building Official and the City's Fire Marshall.

Building Official Forbes stated he was not involved in any discussions before the incinerator was on-site.

Board Member Weaver questioned Director Fischer about the DA. Director Fischer provided history on the DA and stated it is not an agreement which allows the property owner to do whatever they want without consulting the City.

Vice Chair Michelson stated Mr. Wadsworth annexed into the City but then bypasses the City when making changes.

Trude Hull, Retired Code Enforcement Officer with the City of West Melbourne, was sworn in and questioned by Attorney Mr. Repperger:

- Retired from the City of West Melbourne on August 2020; employee for 15 years
- She is familiar with the property at 9075 Ellis Road
- Observed millings and sand stored on property and this was allowable use from the Zoning Department
- Complaint of sandblasting at 9075 Ellis Road property which caused over spray onto the neighbors porch and pool. Respondent immediately cleaned the neighbors porch and pool
- Respondent has always complied with any code related issues
- Storing of materials and construction equipment have always been approved since the time of annexation
- Neither construction related equipment and storing of materials were mentioned in the DA and Respondent has never been cited for being in violation of City codes
- Complaints started June or July 2020 regarding piles of trees and debris being dumped at the property

- Respondent was clearing the airport and he was going to break it down and relocate it
- Ms. Hull did witness the piles of tree debris but never saw the incinerator in person only via email
- She emailed and printed the information regarding the incinerator to all parties involved
- Ms. Hull does not believe there are any code violations on this property

Board Member Luber asked Ms. Hull if she was aware of the firebox. Ms. Hull stated she knew it was being ordered and what he was using it for. She believed he was not in violation.

City Attorney Richardson asked Ms. Hull if she instructed the Respondent to remove the debris pile. Ms. Hull stated no she did not advise the Respondent to remove the debris pile. She gave the Respondent sixty days to burn the debris in the incinerator. Ms. Hull stated permitting is required in residential zoning. Mr. Wadsworth has a Business Tax Receipt and a site plan from when he annexed into the City. She has no knowledge of a site plan nor it having large debris piles and she considers the incinerator to be a piece of heavy equipment and is not aware of these activities not being allowed on the site or if they are on the submitted site plan.

Attorney Repperger clarified Mr. Wadsworth is not being cited for not submitting a site plan. City Attorney Richardson stated this is correct and it is not part of the hearing tonight.

Board Member Palardy asked the Respondent when the burn box arrived on the property. Respondent stated September 1, 2020.

#### **PUBLIC COMMENTS:**

Alec Alvarez of 2217 Bignonia Street, Melbourne, FL 32901 was sworn in and stated he is very concerned about his grandparents. They live in the Falls of Sheridan, 870 Shoshone Lane. His grandmother has asthma and he stated the smell is disgusting, it looks disgusting and they cannot go outside.

Attorney Repperger asked Mr. Alvarez the address of his grandparents and when he last saw smoke activity. He stated 870 Shoshone Lane and he hasn't seen any smoke in the last two weeks.

Jack Losey of 870 Shoshone Lane, West Melbourne, FL 32904, was sworn in and stated he's a retired Navy veteran and the piles of debris are visible from their backyards. The noise is offensive and it smells like a dump. He would like the dump moved to the west of I95. He is concerned about the value of their homes and his home is covered by the smoke and he cannot see the neighbor's house or the retention pond.

Mr. Losey stated he has been in contact with Mr. David Smicherko at the FDEP.

Board Member Shipton questioned Mr. Losey about the visibility from his home to the retention pond. He stated they cannot see 15' – 18' out to the retention pond.

Attorney Repperger asked Mr. Losey if he has anything in writing from FDEP regarding a violation. Mr. Losey stated he only has an email and he will forward it to the City Attorney.

City Attorney advised the Board the FDEP violation does not have any relevance to tonight's hearing and citations.

Robert Griffin of 895 Shoshone Lane, was sworn in and stated he lives in the Falls of Sheridan. The smoke and smell is terrible and the site is inspected and everything is fine but then goes back to normal. The debris pile is a landfill and it smells. The neighborhood and area businesses are all being affected. He would like the pile and incinerator gone.

Attorney Repperger asked Mr. Griffin if he is aware of the fact FDEP permit requires the applicant to submit a closure plan. Mr. Griffin stated yes he is aware and he has no knowledge if Respondent will engage in a closure plan.

Board Member Shipton asked the Respondent if the incinerator is making the smoke. The Respondent stated there is an allowable time for smoke during start up and when it's properly operating it operates as the picture describes.

Mr. Griffin showed Attorney Repperger pictures of the jobsite taken at different times of the morning with smoke coming out of the incinerator.

Mr. Griffin showed the Board a photo taken on September 14, 2020 at 2:26 pm with smoke coming from incinerator and stated it happens all day long.

Board Member Jones asked Mr. Griffin, in his opinion, is it smoke or vapor. Mr. Griffin stated it is smoke and steam.

Board Member Luber asked Mr. Griffin how bad is the smell. Mr. Griffin stated it is based on the wind direction.

Mr. Wadsworth, the Respondent, explained how the incinerator works and the allowable parameters of the permit.

City Attorney Richardson advised the Board of the cited violations and the City has to prove it is not an allowable use.

Director Fischer stated it is a prohibited use.

Director Fischer stated the Code Enforcement Department and Planning and Zoning Department work well together and it is unusual for a Code Enforcement Officer to make such determinations as it is a Planning and Zoning determination.

Attorney Repperger summarized the Respondent's testimony and facts of the case and encouraged the Board to review the application to FDEP. He stated the Respondent has maintained a construction business on this site since annexation and to focus only on the codes and violations against the Respondent which are Sections 98-562. Principal uses and structures and Section 98-565. Prohibited uses and structures when making a decision. He asked the Board to find the Respondent not in violation.

Board Member Jones and Board Member Shipton believe this activity is not neighborly and goes beyond legal aspects.

Attorney Richardson stated the issues tonight are for Sections 98-562. Principal uses and structures and Section 98-565. Prohibited uses and structures and consider these violations when making a decision.

Director Fischer recommends the Board find the violations.

Board Member Shipton motioned to find the violations. Seconded by Board Member Weaver, motion carried 5-0.

Attorney Richardson stated Respondent had requested an extension from the September 17, 2020 Code Board hearing to a Special hearing on October 1, 2020 with the understanding he must cease burning for two weeks until the October 1, 2020 hearing.

Building Official Forbes stated he needs to go the site and see the piles of debris and determine what the Respondent can continue to burn.

Attorney Repperger stated the Respondent's intent is to be a good neighbor. There is material on-site and he has stopped burning. Respondent believes he needs 30 to 60 days to remove/burn the debris and he will not bring any other debris on-site.

Attorney Richardson stated it must be determined what was cleared on-site with the land clearing permit and what was hauled onto the site.

Building Official Forbes recommends zero days to burn offsite materials and \$250 a day fine if the offsite material is burned. The on-site debris can be burned and all offsite materials must be removed within 60 days.

Attorney Repperger asked if the City prefer Respondent use the incinerator or open burn on-site.

Board Member Jones motioned zero days to burn offsite materials and \$250 a day fine if the offsite material is burned and remove all offsite materials within 60 days and \$250/a day fine thereafter if not removed. Board Member Luber seconded, motioned carried 5-0.

## **5. ADJOURNMENT**

There being no further business, hearing was adjourned at 8 pm.