

CITY OF ST. AUGUSTINE, FLORIDA

Code Enforcement, Adjustments and Appeals Board Meeting
September 11, 2018

The Code Enforcement, Adjustments and Appeals Board met in formal session at 3:00 P.M., Tuesday, September 11, 2018, in the Alcazar Room at City Hall. The meeting was called to order by Clyde M. Taylor, III, Chairman, and the following were present:

1. ROLL CALL

Clyde M. Taylor, III, Chairman
Martha Mickler, Vice Chairman
Dennis Wissel
CeCe Reigle - Absent
Noel Mahr
Larry Weeks
Stephen Simmons - Absent

Staff Present:

John Cary, Esq., Assistant City Attorney
David Birchim, Director, Planning & Building Department
Richard Schauland, Building Official and Code Enforcement Manager
Curtis Boles, Code Enforcement Inspector
Robert van Mierop, Code Enforcement Inspector
Sandra Partin, Administrative Coordinator, Recording

The City staff was sworn in.

2. GENERAL PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

B.J. Kalaidi, 8 Newcomb Street, was present and commented that she believed the code enforcement meetings should be recorded, and she asked staff about absentees of code members Mr. Simmons and Ms. Reigle.

3. APPROVAL OF MINUTES (August 14, 2018)

MOTION

Mr. Taylor moved to approve the minutes as presented. The motion was seconded by Mr. Wissel and approved by unanimous voice vote.

3. DISCLOSURE OF EX-PARTE COMMUNICATIONS

None.

4. VARIANCES/TREE REMOVAL

None.

5. REVIEW OF PREVIOUSLY HEARD CASES

Item 5 (a) 2018-0378

Ronald L. Bailey, Jr.
101 South Street
City Code, Chapter 8, Section 8-302
Standard Housing Code 103.2.1,
305.3.1 & 2
City Code, Chapter 19, Section 19-4

Mr. Schauland reported the following:

- On July 10, 2018, this Board continued this case, to allow application to be heard by the HARB, and action could be taken in August.
- On August 16, 2018, HARB continued the application to the September 20, 2018 meeting.
- On September 5, 2018, staff received an email from General Bailey, stating that he was out of the country and would be unable to attend this meeting. And that he had received an elevation certificate, but a mistake was made, and a new one had been ordered.
- Staff recommended that the Board continue the case to October 9, 2018, to allow for the HARB to hear the application and for the corrected elevation certificate to be obtained.

Public comment was opened, however there was no response.

MOTION

Mrs. Mickler moved to continue the case to October 9, 2018, to allow the application to be heard by the HARB and for the corrected elevation certificate to be obtained. The motion was seconded by Mr. Taylor and approved by unanimous voice vote.

6. REVIEW OF NEW CASES

Item 6 (a) 2018-0522

William W. and Lois E. Ruch
22 Joiner Street
City Code, Chapter 25, Section 25-56
Removal of a 21" dbh Live Oak tree,
an 8" dbh Cedar tree, and a 9"
Ironwood tree, without a permit.

Mr. van Mierop read from the staff report and commented to the following:

- On August 8, 2018, while driving the area, he heard the sound of saws and machinery that were consistent with tree removal equipment.
- When arriving to the site, he observed that a Live Oak tree, which was later measured to be 21" dbh, was being cut down and that the top branches had already been removed.
- While measuring the Live Oak tree, he also noticed that an 8" dbh Southern Red Cedar tree and a 9" dbh Ironwood tree had been cut at ground level and

were sectioned off and removed. All three trees were then measured and photographed.

- Upon arrival to the site, the respondent stated that she did not wish for the tree company to get into trouble. And he advised her that the property owner would be the responsible party.
- On August 21, 2018, an Official Notice of Violation and an Official Notice of Hearing, was sent via certified mail to the respondents, both which were confirmed to have been received on August 29, 2018.
- On September 6, 2018, a Posting Affidavit of this meeting, was placed at the property and with the City Clerk's Office.
- That he had conducted an inspection of the property, and was certain that the respondent would have ample room for replacement trees.
- Staff recommended that the Board impose a minimum fine, if any, as the respondent had not intended for the tree company to remove the trees. And that respondents be required to replace with one shade and two Southern Red Cedar trees.
- The applicant and representative of the tree company were present to answer questions.

Mr. Taylor asked for clarification of the respondent's intent to not remove the trees, and also for clarification of the trees shown in the photographs provided in packet.

Mr. van Mierop explained that the respondent advised that she had talked to the tree company about cleaning up some of the trees, and when she awoke the next morning they were already working on the Live Oak tree. He then gave a description of the trees shown in the photographs, noting that about a 25' stump still remained of the Live Oak tree that was removed.

Mr. Wissel asked whether the tree company had given a reason why they had not submitted an application for tree removal.

Mr. van Mierop responded that they had not given a reason. And he explained that the respondent had reported to him that the day before the removal, the tree company had told her that an inspector would come by. But, even after that they still did not apply for a permit.

Mr. Wissel asked what he meant by the inspector would come by, was he referring to the code inspector.

Mr. van Mierop replied that was what he understood the statement to be.

Mr. Mahr questioned the reference from the staff report, "similar to a 2017 case that came before this Board", was that related to this same property or another property.

Mr. van Mierop responded that it was an independent case, but had been included due to the similarity of this case.

Louis Ruch, 22 Joiner Street, was present and testified to the following:

- That she knew the gentlemen with the tree company, and knew their mother.
- That she had called them to trim some trees before a hurricane could come through.
- She had asked that they look at the Oak tree, because after Hurricane Matthew, it was leaning and the roots had started lifting, and causing damage to the brick pavers. They inspected the tree and fixed the pavers.
- The inspection proved that there was air under the roots, and that it would have to be removed.
- The next morning, she was sitting on the porch with their mother, the trees had been removed and she commented that was quick. The mother explained to her that a permit was not required when trees were damaged.
- She paid the contractor, and then the code inspector showed up.

Mr. Taylor asked why the Cedar tree had been removed.

Mrs. Ruch responded that the tree company reported that the tree had a problem. And she added that a gentleman from FEMA had come around after Hurricane Matthew, and asked if she would pay to have the tree removed, as it looked dangerous.

Mr. Mahr asked the applicant whether she had an arborist inspect the trees

prior to hiring a tree service to remove them.

Mrs. Ruch responded that she had not, as she was trusting the tree company.

Nicolas Reid, 1930 Adams Acre Road, was present and testified to the following:

- That the Red Cedar tree was pushing up against a concrete wall and into the street, and that her gate was hindered from opening and eliminating access to the path.
- That the Oak tree had actually settled in the top of the Ironwood tree, and had to be removed at about 25' up, then all that was left was a small twig, with the other leaning over the road.

Mr. Taylor asked Mr. Reid how long he had been removing trees, and if he had advised Mrs. Ruch of the requirement to obtain a permit.

Mr. Reid responded that he had been removing trees for 13 years. That he had reported to Mrs. Ruch that a permit may be required. He further reported that he and his brother inspected the trees, and due to the poor condition of the trees, they did not believe a tree permit was necessary.

Mr. Wissel asked Mr. Reid if he was advising homeowners that they were not required to obtain a permit. Stating that he would want to be correct, advise the homeowner's of obtaining a permit, and

that he had sharp chainsaws, hard hat, and all the proper equipment.

Mr. Reid responded affirmative, and stated that all trees that he had removed were either rotten or dead. And that this was the first tree within the downtown area that he had removed.

Mr. Mahr asked Mr. Reid if he were a certified arborists, or if he had an arborist he could call upon in such situations.

Mr. Reid responded that he was not an arborists, and that he did not have an arborist to contact.

Mr. Taylor read section 25-56 into the record and asked Mr. Reid if he would give the respondent her money back.

Mr. Reid replied that he would not. But if she received a fine, he would make it right with her.

Mr. van Mierop approached the board and commented that the city had a comprehensive way to address such issues to avoid cases such as this. Whether it was a lack of communication, the requirement for a permit could not have been avoided.

Mr. Taylor asked if the respondent could have been cited for three separate violations, rather than one.

Staff replied affirmative.

Mr. Taylor asked Mr. van Mierop if he noticed the pocket of air beneath the roots.

Mr. van Mierop commented that when inspecting a site where a tree had been removed without a permit, he would look at the perspective of whether or not he would have denied the removal had the permitting process been followed. In this case, the Live Oak and the Cedar tree would have been brought before this Board.

Mr. Cary clarified with the board that the ironwood was not a protected tree, therefore there is a code provision that would allow for the planning director to administratively approve an after-the-fact permit with a fee of \$200 for the size of that tree, and then there would be two additional violations.

Public comment was opened.

B.J. Kalaidi, 8 Newcomb Street, commented to the following:

- Was the inspector in the area and just happened to hear a tree being removed, commenting that it was not clarified.

Public comment was closed.

Mr. van Mierop clarified that routinely, staff did observe violations while conducting inspections at nearby properties.

Mr. Mahr commented that the respondent was not properly informed of the permitting process, but the tree surgeon should have known what to do. And if he operates within the city, he should have an arborist on speed dial.

Mr. Taylor commented that he would start a fine at \$1,000. That while he did not believe the respondent was trying to circumvent the permitting process, a fine should be imposed as not to set a precedent to allow tree removal without a permit or penalties imposed.

Mrs. Mickler asked for clarification of the maximum fine per violation.

Council and staff reported the maximum fine to be \$5,000 per violation.

MOTION

Mr. Taylor moved to approve finding violation and impose a fine in the amount of \$1,000 for the irreversible cutting of a tree, and require replacement of two Southern Red Cedar trees and one shade tree. The motion was seconded by Mr. Wissel and approved by unanimous voice vote.

7. CITY ATTORNEY ITEMS

None.

8. OTHER BUSINESS

Presentation of proposed updates to Chapter 8, of the City Code for CEAAB's review prior to discussion

at the October 9, 2018 CEAAB meeting.

Mr. Schauland reported that staff was requesting the Board review the draft form of changes to the building code, noting that there was an additional website link provided to allow for the members to look at when reviewing the drafted changes in the ordinance/code. He then explained that if upon review, the Board approves the recommended changes, then an ordinance will be drafted and presented to the City Commission for adoption. And he gave brief explanations of the proposed changes.

Mr. Taylor confirmed with staff the purpose of updating the code, and asked if there was access for the public to review the codes.

Mr. Schauland explained that access was available to the public.

Mr. Taylor commented that if the code only referred ordinances, then he believed it would be wise to make it accessible to the public.

Mr. Birchim commented that we could link it on the City's website. And he added that staff would be available for questions by the public.

Mr. Wissel commented that in reference to insurance, when he was recently renewing, he was provided a large stack of paper and had learned that through links provided, it allowed him to be easily directed through.

Mr. Birchim responded that various versions of the code would be available to the public upon request and on the City's website. He assured the Board that there was no rush, that should they have questions at the next meeting, another draft could be prepared.

Mr. Cary commented that this was a rough draft, to give an idea of what the substance would be. And that a final draft would be presented to the Board at the next meeting, and should staff receive a formal approval from this Board, then that would be sent to the City Commission.

**9. REVIEW OF CONFLICT
STATEMENTS FROM PREVIOUS
MEETING**

None.

10. ADJOURNMENT

Meeting was adjourned at 3:43 P.M.

Clyde M. Taylor, III, Chairperson

Sandra Partin, Administrative
Coordinator