

MINUTES
CODE ENFORCEMENT SPECIAL MAGISTRATE HEARING
COMMISSION CHAMBERS, CITY HALL
JULY 09, 2020
3:00 pm.

Call to Order: Magistrate Joe Mawhinney

Explanation of Procedures / Swearing-in of Witnesses: Magistrate Mawhinney

Staff in attendance: Assistant City Attorney Seth Claytor, Community Development Director Ameer Bailey, Code Enforcement Officer Carl Watson, City Planner Felicia Hutchinson, Police Chief Art Bodenheimer, Building Official Mickey Matison, and Building Inspector Ron Kilette.

Magistrate Mawhinney called the first case.

1. Case # 201900004
Parcel No. 262729-496500-000022
Martin Family Trust
295 E. Park Ln.

Code Enforcement Officer Watson stated that this property has been out of compliance for some time. An inspection on July 6, 2020, shows that the property is still in violation.

Assistant City Attorney Claytor stated that the City requests certification of fines from the date of the original order for noncompliance until July 2, 2020. The City shows fines from November 14, 2019, to July 2, 2020, or 231 days. The administrative cost is \$198.75. The property owner has made improvements and is working towards compliance.

Magistrate Mawhinney stated that the fines were set at \$50 per day. Certification of fines would total \$11,550, plus the administrative cost of \$198.75. The Magistrate asked if there was anyone to speak on the owner's behalf.

Magistrate Mawhinney stated for the record that Tim Davis, appearing on behalf of the owner, is a client of his and that Eric Heideman, who appeared as the representative of the Martin Family Trust, had previously engaged him for legal consultation about the case. Since the hearing was only for certifying fines, the prior representation of or consultation with Mr. Heideman would not have an impact on the certification as the violation has already been determined. Thus, he was comfortable going forward with the case.

Tim Davis, General Contractor and Licensed Broker, stated that he spoke on behalf of Mr. Heideman. He brought to the Code Enforcement Officer's attention that Polk County lists Mr. Heideman's property as a duplex and stated that the issue of nonconformity should have been addressed a long time ago.

Assistant City Attorney Claytor stated that the testimony goes directly to whether or not a violation exists. The order has been entered finding violation. Today, the City is requesting a determination on whether or not compliance has been achieved.

Magistrate Mawhinney agreed with Attorney Claytor's assessment, stating that the time for appealing or challenging the finding has passed.

Mr. Davis asked about the violation that the Code Enforcement officer found in the latest inspection, stating that there is currently no way to cook, and no refrigerator.

Director Bailey stated that the City is asking to certify the fines through July 2nd. The City was unable to inspect before July 2nd, and the City received no correspondence from the owner.

Assistant City Attorney Claytor stated that the City has been unable to confirm if there are tenants at the property. Specific equipment have been removed, and the Code Enforcement Officer appreciated the modifications, but confirming whether there are residential tenants is a remaining issue.

Mr. Davis stated that the owner has a lease signed by the tenants that live at the property.

Assistant City Attorney Claytor suggested that Mr. Davis contact Director Bailey and provide her with the lease. Director Bailey would review the lease to verify compliance, then instruct the property owner on how to move forward with a reduction.

Eric Heideman asked if there were any other non-compliant issues with the building itself.

Code Enforcement Officer Watson stated that the Building Official noted issues on his recent inspection and will be sending out a letter.

Magistrate Mawhinney stated that he would certify the fines through the date the City has requested, July 2nd. The property owner should then meet with the City to resolve the remaining issues. When the property is in compliance, the property owner could apply for a reduction of fines. Magistrate Mawhinney stated that if Mr. Heideman objected to the ruling, he would continue the case to the next hearing, but that the fines would continue to accrue no matter what happens today, as the circumstances have not changed. **Magistrate Mawhinney** stated that once the City inspects the property and finds it in compliance, then the fines stop accruing, and the property owner can apply for a reduction.

Assistant City Attorney Claytor stated that if the order is entered today, he will request that the Magistrate make a note on the order that efforts that have been made and that the property owners have cooperated with the City to bring the property into compliance.

Magistrate Mawhinney asked Mr. Heideman if he had any objection to the certification of the fines. Mr. Heideman stated that he was not comfortable with the fines being certified, as he felt the property has been in compliance the entire time. **Magistrate Mawhinney** stated that he would continue the case to a hearing before another magistrate because of Mr. Heideman's response.

Tim Davis asked about the letter that the City is sending out concerning other infractions, if those issues are in addition to the original issues, and if the fine is accruing \$50 per day.

Assistant City Attorney Claytor stated that the issues are in addition to the original, and that the fine that is accruing relates to Section 2.04.01(A) of the code, on the use of the parcel.

Mr. Davis stated that the issue involving the fine was brought into compliance in December.

Assistant City Attorney Claytor stated that there was more to the violation than acquiring the lease. He has not reviewed the lease and does not know whether City staff has reviewed it. When City staff inspected the property, it was still non-compliant. He stated that City staff can revisit the property with Mr. Davis to determine whether the violations still exist, and review relevant documentation. The City's goal is to help property owners achieve compliance, and the property owners should contact Director Bailey for assistance.

Magistrate Mawhinney stated for the record that Case # 201900004, located at 295 E. Park Ln., has been continued to the next hearing or upon notification.

Assistant City Attorney Claytor asked that no specific date be given in case the City holds a special proceeding.

Magistrate Mawhinney called Case #2

2. Case # 201900010
Parcel No. 262732-499500-000102
Denis, Marie L
430 E. Haines Blvd.

Code Enforcement Officer Watson stated that the property was in violation for 117 days. The City is asking to be awarded fines of \$5,800 and an administrative cost of \$119.51. The owners have been working to come into compliance and were compliant before the hearing.

Magistrate Mawhinney stated that he would certify the fines through the date of compliance for \$5,800 plus the administrative cost of \$95.32 payable in 30 days.

Magistrate Mawhinney called Case #3

3. Case # 201900012
Parcel No. 262732-505700-000051
Salomon, Charite & Alceus
315 S. Ilakee Ave.

Code Enforcement Officer Watson stated that the property was first cited in 2019 for storing vehicles. There are still inoperable vehicles on the property. A new privacy fence has been installed, and sanitation has not been maintained. The City is asking for abatement and administrative costs, and fines for 117 days totaling \$5,800.

Assistant City Attorney Claytor stated that the pool is a health/safety/welfare concern. The enclosure is missing portions of the screen. There is free access in and out of the pool's screen enclosure. The City will hold the fencing issue for a future hearing and is seeking authorization to abate the vehicles and the pool, and the cost of prosecution and certifying the fine from March 8, 2020 to July 2, 2020, totaling 116 days of noncompliance.

Joanes L. Fequiere, tenant and representative for the property owner, stated that the vehicles have been moved for a week.

Code Enforcement Officer Watson stated that as of July 6, 2020, vehicles were still parked on the property. Photos of the violation are in the file.

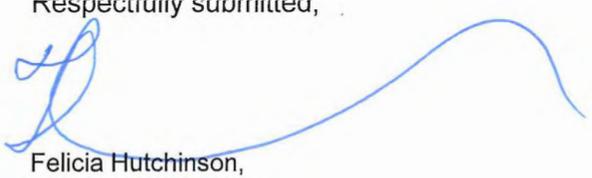
Magistrate Mawhinney asked Mr. Fequiere about Officer Watson's pictures showing the vehicles on the property, and about the pool and the enclosure.

Mr. Fequiere stated that the vehicles have been towed since the previous day. He stated that he had arranged for someone to work on the pool, but because of COVID-19, the work was canceled.

Magistrate Mawhinney stated that the original order was for both the vehicles and the pool. Though there may be a question about the vehicles, there is no dispute about the pool. He certified the fine through the date requested by the City, July 2, 2020, in the amount of \$5,800 plus the administrative fee of \$134.02. He issued the abatement order requested by the City, as the primary concern is of the health, safety, and welfare issues posed by the pool and pool enclosure.

The Magistrate adjourned the hearing at 3:40 pm.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Felicia Hutchinson', is written over a light blue horizontal line. The signature is stylized and cursive.

Felicia Hutchinson,
City Planner.