

CITY OF WINTER SPRINGS, FLORIDA
MINUTES
CODE ENFORCEMENT BOARD
REGULAR MEETING
OCTOBER 22, 2019

CALL TO ORDER

The Regular Meeting of Tuesday, October 22, 2019 of the Code Enforcement Board was called to Order by Chairperson Matthew Criswell at 5:30 p.m., in the Commission Chambers of the Municipal Building (City Hall), 1126 East State Road 434, Winter Springs, Florida 32708.

Roll Call:

Chairperson Matthew Criswell, present
Vice-Chairperson Maurice Kaprow, present
Board Member Michael Burns, present
Board Member Carole Giltz, present
Board Member Dennis Robinson, present
Senior City Attorney Jennifer Nix, present
Assistant to the City Clerk Christian Gowan, present
Assistant to the City Clerk Tristin Motter, present

A moment of silence was held followed by the Pledge of Allegiance.

No changes were made to the Agenda.

Assistant to the City Clerk Christian Gowan swore in those who would be providing Testimony during tonight's Meeting, Captain Matt Tracht and Respondents Colleen and Michael Kahl.

AWARDS AND PRESENTATIONS AGENDA

100. Not Used

CONSENT AGENDA

200. Minutes From The September 24, 2019 Code Enforcement Board Regular Meeting

REGARDING THE SEPTEMBER 24, 2019 CODE ENFORCEMENT BOARD REGULAR MEETING MINUTES, "I WOULD LIKE TO MAKE A MOTION TO ACCEPT THE MINUTES." MOTION BY BOARD MEMBER BURNS. SECONDED BY BOARD MEMBER GILTZ. DISCUSSION.

VOTE:

**BOARD MEMBER ROBINSON: AYE
BOARD MEMBER GILTZ: AYE
BOARD MEMBER BURNS: AYE
VICE-CHAIPERSON KAPROW: AYE
CHAIRPERSON CRISWELL: AYE
MOTION CARRIED.**

PUBLIC HEARINGS AGENDA – CONTINUED CASES

300. Not Used

PUBLIC HEARINGS AGENDA – REPEAT CASES

400. Not Used

PUBLIC HEARINGS AGENDA – NEW CASES

**500. Code Enforcement Division – Police Department
CASE # 2019CE002312
Michael Kahl
120 East Panama Road
Winter Springs, Florida 32708
City Code 5-4.: Permit Required for Tree Removal and Land Clearing
Inspector: Captain Matt Tracht**

Note: The Respondent was present.

Captain Matthew Tracht, Support Services Bureau, Police Department introduced the Case and testified, "Late afternoon on Friday September 6th, I received a voicemail call from Kevin Maddox who is the City of Winter Springs' Arborist stating that he was working a complaint that came into him about several trees that were being cut down at this residence on Panama.

I spoke with Kevin (Maddox, Landscape Manager, Urban Beautification Division, IT & Administrative Services Department) on the phone Monday morning, he stated that he was on scene, he observed a company called "Big Mike's Tree Service" cleaning up from a job. The trees had already been removed. At that – time he was unsure of how many trees had been cut down, how big they were. Our Ordinance specifies caliper inch and stuff like that. We weren't able to determine any of that. Kevin did provide some photos that he took, when he was out there Friday.

Later that Monday afternoon Kevin came to my office in which time I received a call from Big Mike's Tree Service which was Mike. That was a speakerphone call, in my office just me, Kevin, and Mike on the phone and Mike stated that three (3) pines were cut, two (2) dead trees, and five to six (5 - 6) oak trees were cut down. We asked questions, if he invoiced the owner so we'd have some type of record. He said he did not, that the owner did pay by credit card. We asked if Mike was a Certified Arborist and he has stated he is not."

Photographs were shown from "Related Case Information" with brief comments.

Continuing, Captain Tracht testified, "Through the investigation we started a Case, we found out that previous Permits had been pulled by this address, by this owner – three (3) of them in 2017 and one (1) in 2018 with this specific information on each Permit. One (1) tree, six (6) trees, fifteen (15) and then remove selected trees in the back."

Additional photographs from "Related Case Information" were then shown with further remarks.

Captain Tracht testified, "So, as of this presentation, so far no documentation has been received from an Arborist from the International Society of Arboriculture or Florida Licensed Landscaping Architect stating that the trees presented a danger to property or persons. Nothing exists to my knowledge. Nothing was presented to myself or to the Arborist at all.

Basically, City Code 5-18. deals with the enforcement part - the removal or death of a tree in violation of this chapter shall be deemed irreparable or irreversible. The trees are gone, obviously we can't put them back. Like I said before, we don't know the size of the trees, we don't know what the type of the trees are. We just have Big Mike's testimony off a cell phone."

Captain Tracht then addressed enforcement penalties and stated, "Typically our City Ordinance states a Fine of two hundred and fifty dollars (\$250.00) per tree or five hundred dollars (\$500.00) per specimen, not to exceed five thousand dollars (\$5,000.00). That is for failure to obtain a Permit. A Permit check was done; no Permit was pulled for this job. A removal of a tree without a Permit is fifty dollars (\$50) per caliper inch; like I said before, we don't know the size of these trees.

There are two (2) separate Violations, not pulling the Permit and then if we were to be able to see what was left of the tree and take those measurements, those Fines would be added as well. So, I recommend that we find the homeowner in Violation of City Ordinance 5-4.; for the irreparable or irreversible violation of eight to eleven (8 - 11) trees based on Big Mike's testimony. And, my recommendation to you on this one is you follow the guidelines set forth in City Code 5-18."

Captain Tracht entered "WS-1 Supplemental Information" into the Record.

Remarks continued.

Ms. Colleen Kahl, 120 East Panama Road, Winter Springs, Florida: testified, "As you know we recently removed a grouping of trees that were in front of our house and we would like to address why. Labor Day weekend this year was an extremely anxious time for most residents throughout Florida; Dorian a category five (5), at the time, hurricane, winds destroying the Bahamas and heading in our direction. We were preparing for the storm as all others were; trying to find water on the shelves and gas for generators and vehicles was increasingly harder.

We had many provisions and prepared the very best we could for a very unstable and needless to say, scary storm approaching. Even the experienced weathermen and women couldn't accurately predict what to expect but told us to prepare accordingly. Businesses shut down, schools were closed, and even town offices; so we knew this was a truly serious and potentially life threatening storm."

Ms. Kahl continued, "We had witnessed firsthand the destruction of trees on our property and power outages that hit us hard through Hurricane Irma and feared worse this time around. We spent weeks repairing Irma's damage of fallen trees and still have some that are leaning and uprooting from that storm. The trees that concerned us the most however were hovering directly over our house were undoubtedly in question.

Specifically, we pointed out seven (7) trees in total that were a concern to us. Two (2) leaning over the power lines in front of our house, which we had pointed out - and five (5) directly on top of the front of our home. We had a tree company tell us that 'There are no Permits needed right now' and that if there were any trees that concerned us, we would be able to remove them with no issues; also indicated in Mr. Maddox's report as being said directly to him by the same tree company. We were even told that the Governor of Florida had suspended Tree Permits. We were fed bad information and much to our detriment, we believed them and we're here.

We are law abiding residents who have obtained Permits in the past for tree removal, paid the Fees, and even replanted trees on our property, as Mr. Maddox had pointed out in his report and supplied detailed information when we pulled the Permits, when we were inspected, and when they were closed; further verifying that we abide by the rules set forth by Winter Springs every time in the past. Never once did we want to go against the grain, or break any rules disrespectfully, or be on bad terms with our town."

With further comments, Ms. Kahl concluded her testimony saying, "We weren't trying to blackout our property or take advantage in any way. We focused solely on the trees that would have caused a catastrophe to our home and our safety. There are a few discrepancies with the report that I would like to address; he said he was on the scene Friday, September 6th and twenty (20) minutes prior, he received a call anonymously that the trees were being removed on that day which wasn't true. Though the dates may not be much of a concern to some, they definitely are to us. We are making sure the committee knows that this was done prior to, not after, the Hurricane.

Seeing previously that we had removed a tree Sunday, previous to the day, on the first, due to the storm. He indicated on his report that he did not know the exact number of trees and also reports unknown how many caliper inches are the trees, yet we have a handwritten note that he says they were fifty (50) caliper. I don't know how that can be so after the trees and stumps had been carefully removed.

I could understand if the stumps were still there, basic measurement could have been taken but that wasn't the case. This seems to be a ventured guess at best, in my opinion. We look forward to working with the town in the future and want to continue with what we feel has been a good reputation and proceed in that manner always. We look forward to being actively involved with the town and also obtaining good and correct information pertaining to all aspects moving forward."

Further comments continued.

In reference to the Respondent's testimony that the Contractor said no Permit was necessary, Board Member Dennis Robinson asked, "Did you ever follow-up and check-up on this with the City to see if that was true or did you just accept his word for that?"

Mr. Michael Kahl, 120 East Panama Road, Winter Springs, Florida: presented documents identified as "WS-2 News Stories" and "WS-3 City Website" for the Record, and said that he looked up information on the City website and on some news sites. Mr. Kahl further spoke of his personal concerns and efforts.

Mr. Maddox relayed his encounter with the Contractor, Big Mike's Tree Service and also offered clarification on the previously mentioned "hand written note" to which he stated that it referred to "fifty dollars (\$50.00) per caliper inch".

Discussion ensued on tree measurements, possible ways to determine a tree size, and potential problems these trees may have caused.

Chairperson Criswell stated, "I should probably make some full disclosure. I have known Mike for thirty-nine (39) years." Chairperson Criswell added, "I have not spoken to him about this."

Discussion then followed on the timing and status of the removal, information and research options, City-approved companies, the importance of trees in the City, and the possibility of a credit system for homeowners.

Senior City Attorney Jennifer Nix addressed Chairperson Criswell for the Record and stated, "Since this is a Quasi-Judicial Hearing, and Mr. Chair, since you knew Mr. Mike Juan and he has done work at your home, or somewhere for you - will you be biased in making your decision by that fact?" Chairperson Criswell responded, "No, because it doesn't have anything to do with Mr. Juan."

Attorney Nix then referred to the document identified as “WS-2 News Stories” and mentioned it did not accurately describe the referenced *Florida Statutes*. Comments continued on area cities, legal requirements, and tree credits.

Attorney Nix stated, “As far as the penalties that are being requested, that are applicable to this matter – in 5-18.(b)(1) and (2) are what Captain Tracht is asking for about the penalties, and that’s what are imposed - when 5-4. is addressed. The point being those penalties address failure to obtain a Permit under 5-4.(a), is a Fine of two hundred and fifty dollars (\$250.00) per tree or five hundred dollars (\$500.00) per specimen or historic tree removed, not to exceed five thousand dollars (\$5,000.00). For the Board’s information, I don’t believe we’ve heard any testimony that any of the trees were necessarily specimen or historic.

And then with (b), the removal of a tree without a Permit, and it being a Fine of essentially fifty dollars (\$50.00) per caliper inch not to exceed five thousand dollars (\$5,000.00).”

Attorney Nix referred to the testimony that had been offered and reminded the Board Members, “The Board has to base its decision on competent and substantial evidence.”

Much discussion ensued on an appropriate Fine.

“I MOVE TO FIND RESPONDENT IN VIOLATION OF CITY CODE AND, BECAUSE IT IS AN IRREPLACABLE OR UNCORRECTABLE VIOLATION, THAT THE RESPONDENTS BE FINED THE AMOUNT OF ONE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$1,750.00) IN ACCORDANCE WITH THE CITY ORDINANCE.” MOTION BY VICE-CHAIRPERSON KAPROW. SECONDED BY BOARD MEMBER ROBINSON. DISCUSSION.

VOTE:

CHAIRPERSON CRISWELL: AYE

VICE-CHAIRPERSON KAPROW: AYE

BOARD MEMBER GILTZ: AYE

BOARD MEMBER ROBINSON: AYE

BOARD MEMBER BURNS: AYE

MOTION CARRIED.

PUBLIC HEARINGS AGENDA – NON-COMPLIANCE CASES

600. Not Used

REGULAR AGENDA

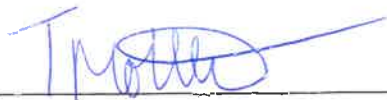
700. Not Used

In other Board related business, Comments followed on a possible November meeting. Chairperson Criswell said, "I am in town." A quorum was then addressed to which Board Member Carole Giltz remarked, "I should be here." Vice-Chairperson Maurice Kaprow added, "I will be here." Concluding the brief discussion, Chairperson Criswell confirmed, "I think the 26th, if everybody is fine with it." No objections were voiced.

ADJOURNMENT

Chairperson Criswell adjourned the Regular Meeting at 6:44 p.m.

RESPECTFULLY SUBMITTED:



TRISTIN MOTTER,
ASSISTANT TO THE CITY CLERK

NOTE: These Minutes were approved at the November 26, 2019 Code Enforcement Board Regular Meeting.