



MINUTES

MUNICIPAL CODE ENFORCEMENT BOARD MEETING Wednesday

September 27th, 2023, 2:00 P.M.

CITY OF ST. AUGUSTINE BEACH, 2200 A1A SOUTH, ST. AUGUSTINE BEACH, FLORIDA 32080

I. CALL TO ORDER

Chairman Kevin Mr. Sweeny called the meeting to order at 2:01 P.M.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Mr. Kevin Sweeny, Mr. Edward Pritchett, Nick Binder, Ms. Roberta Odom, Mr. Eugene Mariutto

STAFF PRESENT: Code Enforcement Officers Mr. Timmons, Mr. Ferris, Building Inspector Mr. Brown, City Attorney Mr. Blocker, Recording Secretary Ms. Miller

IV. APPROVAL OF MINUTES OF JUNE 28TH, 2023, MEETING

Motion: to approve June 28th, 2023, meeting. Moved by Mr. Pritchett, seconded by Mr. Binder, passed S-0 by unanimous voice-vote.

V. NEW BUSINESS

- A. Notice to appear issued to Attorney Whitehouse representing owner of 56 Willow Drive, parcel 1640900000 for the following violations: 1. FL. Building Code 105.1, failure to obtain permits for construction of a carport. 2. City of St. Augustine Beach Article V1. Development Design and Improvement Standards, Sec. 6.02.03. Rights-of-way, (D.) regarding the addition of a secondary driveway added without obtaining rights-of-way permit.
- B. Notice to appear issued to WDESTATE 6 LLC. Owner of 3945 A1A South, parcel 1744850030 for the following violation: St. Augustine Beach City Code, SEC. 8.00.10. – Nonconforming signs. (4) Signs discontinued: Failure to remove discontinued sign.
- C. Notice to appear issue to Harrold Groome III (HVG Properties, LLC.) owner of parcel #7 between 106 and 108 7th Street for not obtaining rights-of-way permit for parking area and violating Commission Order (2019-03) Approving Conditional Use.

Mr. Sweeny: Okay, members. It looks like it is 1 minute past two o'clock, and we have quorum. I ask you to please look over the minutes from the June 28th meeting if you haven't already and we will accept a motion to approve the minutes.

Motion: Approval of June 28th, 2023, minutes. **Moved by** Mr. Binder, and **Seconded by** Mr. Pritchett, **Passed 5-0** by the board unanimous voice vote.

Mr. Sweeny: Let's move on to the new business. A notice to appear to Attorney Whitehouse representing the owner of 56 Willow Drive for multiple violations, including failure to obtain a permit, a design and improvement standard violation, and a right-of-way violation. Is Attorney Whitehouse present?

Mr. Timmons: I spoke to Mr. Whitehouse, he said he won't be attending today since he has submitted documents for the November P&Z which he intends to complete by the deadline.

Mr. Sweeny: Okay, so this means we can remove him.

Mr. Timmons: As of right now, the documents he has submitted are not complete.

Mr. Sweeny: Okay.

Mr. Timmons: He was supposed to meet the deadline for next month's but missed it, so he submitted documents in anticipation of being on November's agenda for the November P&Z.

Mr. Sweeny: So, he's still in violation of the code?

Mr. Timmons: As of current, yes.

Mr. Sweeny: Okay. This is the owner of 56 Willow Drive or the attorney himself.

Mr. Timmons: This is the representative, which is Mr. Whitehouse.

Mr. Sweeny: Okay. All right, then let's go ahead and hear this case if it's okay with membership.

Mr. Timmons: We do have Ms. Miller here since the package that he submitted directly refers to planning and zoning, which is the issue at hand. The code.

Mr. Ferris: If Planning and Zoning receives a complete package, this case will be at the November Planning and Zoning Meeting. Fines are still incurring on both violations; we are at eighty-one (81) days since the July 8th deadline for compliance for the variance to be put in or removal of the pavers and carport structure.

Mr. Sweeny: Okay, and we did \$250 a day, was that correct?

Mr. Ferris: Yes, for each one.

Mr. Sweeny: For each one. All right, so that's a lot of money. So, I don't know if there's anything we confer, anything further we can do, council?

Mr. Blocker: Well, I think currently, Mr. Chairman, you'll have a matter of this before. I understand some of the emails have gone back and forth. I certainly understand Mr. Whitehouse's position as enter representing his client, but there was a notice to appear. There is, I guess, an effort to address this at the Planning and Zoning Meeting, but we have a code violation that's in front of this board today. So, I think the board is well within its discretion to act.

Mr. Sweeny: Here's my question, what have we done in the past to people who have been given a notice to appear and have not appeared? A better question perhaps is, what is our authority? What can we do to those who decide not to appear?

Mr. Blocker: Obviously, we've had a response that he was not going to be here, and I understand his reasons why, I get that, for this board today, you all can go ahead and move forward with this matter. The other party was given an opportunity to come, you all can go ahead and continue assessing fines, or decide how to move forward. You're limited to the action that this board will normally be able to take in this regard. As far as some type of contempt for not showing up, I'd have to do a little bit of research on that. The issue here is, "Was there notice? Was there an opportunity?" and clearly, we have a response which I believe, correct me if I'm wrong, was he was not showing up. Is that correct?

Mr. Timmons: Correct.

Mr. Sweeny: What was the reasoning that he was not going to show up? Was it just that he was going to show up at Planning and Zoning, therefore he didn't feel like he must show up?

Mr. Timmons: Speaking to Mr. Whitehouse through email, he said that he won't be attending due to submitting the package to attend the November P&Z meeting. Therefore, he insinuated that progress has been made and there's not much else going on further until he submits the final package for the meeting.

Mr. Blocker: So, I guess the question, Mr. Chairman, if I may, is does the application pause this process? I'm not aware that it does but I believe that's Mr. Whitehouse's understanding, if I understood his emails. There's been a lot of back and forth on this. You all's decision-making is independent of Planning and Zoning. I mean, obviously, they're unrelated to a point but we have a violation that's in front of you today. I don't know that the application, which I think was originally supposed to be in October, but that deadline was missed. I think you are well within your discretion, Mr. Chairman, to decide on how you want to handle this specific item.

Mr. Binder: How long ago was he given the notice to appear?

Mr. Ferris: I would have to look back at my notes, but he was given ample time.

Mr. Binder: If he had enough time, he could have had someone from his office or him appear.

Ms. Odom: According to these notes, Mr. Whitehouse and the homeowner were sent certified letters on 8/29, so that's close to a month.

Mr. Ferris: Okay, I wasn't sure those notes were in there so that's correct.

Ms. Odom: So, plenty of time. I guess my second question for some clarification, we are fining him two hundred and fifty dollars (250) a day per violation which there's three. Is that correct?

Mr. Ferris: Two violations.

Ms. Odom: Two? Okay, so it's \$500 a day. Where's the understanding, with Mr. Whitehouse or the homeowner, if he goes to P&Z, does he think that \$500 a day is going to go away? I mean, that's just a question. I mean clarification. What can we do to force that if we want to?

Mr. Sweeny: He might be under the misguided, and that's my term, belief that by following all the proper paperwork, the fines end. We have an opportunity here to let him know those fines continue should that be what we want to do as a board. Is that correct?

Mr. Blocker: Mr. Chairman, that is correct. It might be helpful if Ms. Miller has it here, to kind of give us a little bit of background, little bit more detail, flash out the details of the application that he made, kind of the deadline, and all this, just to inform the board so they have a little bit more background on this.

Ms. Miller: Mr. Whitehouse filed the variance application because the carport and the driveway at 56 Willow Drive were built without permits. There is no building permit for the carport, there was no right of way permit for the second driveway. If he had submitted a permit, the homeowner, to build the carport, it would've been denied at the zoning level. The carport is built one and a half feet off the side of the property line. It's less than 10 feet away from the main structure so those are two violations right there which require a variance. And then the second issue is that the driveway, the second driveway, leading to the carport was built without a right of way permit which also would've been denied by staff because our city LDRs have a maximum 18-foot width for driveways and for residential driveways. The current existing driveway is 21 feet wide, the new driveway to the carport is 17 and a half feet wide. So that's another reason for the variance. So right now, we have a variance application that is requesting a side yard step back, reduction from 10 feet to 10 and a half feet, reducing the minimum 10 feet requirement between buildings from 10 feet to 7 and a half feet, and to exceed the maximum 18-foot width allowed in right ways to go to 38 feet. That's what the variance application is for and today we don't have all the required documents for it. We have a partial submission.

Mr. Blocker: Well, just to highlight that, sir. I think there are a couple of things for the board, procedurally, to consider. One, there was a duly noticed agenda item today, the party had an opportunity to be here today. This is not to criticize; I understand his reasons for thinking that that application would pause these proceedings. I'm not sure I agree with that, and I think that does not- cause again, we don't know what the Planning and Zoning's decision going to be. There's a legal standard for these variances. You have a homeowner, property owner, that made these improvements to the property without seeking the correct permission, and staff has clearly articulated that in multiple emails and communication. This has been an ongoing discussion, so I think some assumptions are made that the application process, which still is not complete as of now... Is that correct, Ms. Miller? If I understand?

Ms. Miller: You're right.

Mr. Blocker: So, we still have an incomplete application so again, I believe this board is well within its authority to decide based on the competent substantial evidence that's been submitted today or it's before you.

Mr. Mariutto: He is asking for a lot in his variances and if he doesn't get them, I mean we're back on June 28th, you know. This is all for nothing. So, I say keep the fines rolling.

Mr. Sweeny: Is that a motion?

Mr. Mariutto: I make a motion to keep the fines.

Mr. Sweeny: All right. Members, we have a motion on the floor to continue the \$250 a day per violation at 56 Willow Drive. Is there a second?

Mr. Binder: Second.

Ms. Odom: Second.

Mr. Sweeny: I hear a second. Any discussion?

Ms. Odom: Just a comment, I guess, on it that we need to make sure Mr. Whitehouse realizes this because he says he's going to get this in by November, which he said he was going to give them by October, and he did not, these fines keep rolling. Just so he is clear, and the homeowner is clear.

Mr. Ferris: Yes, ma'am.

Ms. Odom: Yes. Awesome.

Mr. Timmons: I have been in contact with Mr. Whitehouse, and the Zoning Department has been in contact with Mr. Whitehouse pretty much every day for the past week and a half. So, like I said, I spoke to him today when he informed me that he wouldn't be here today, so I can relay. He asked for an update today. So, I can update him on the information.

Mr. Sweeny: Question. How often are people that we have fined accumulating? How often are they updated or reminded that they are fined accruing on their parcels?

Mr. Timmons: That's hard to say because, you know, communication is different with everybody. Right now, Mr. Whitehouse is a representative of 56 Willow so he's actively communicating and trying to figure it out. Regardless of the current situation, we're all in contact and then he's emailing everybody. So, usually, we don't necessarily send out notifications of an updated number or what have you, we send out notifications of appear, violation, things like that, or when you deem necessary that we send out notifications or make contact.

Mr. Sweeny: Okay members, any further discussion on the motion? Okay, all those in favor of the motion, say aye. [unison saying aye] All oppose, nay. The aye's have it.

Motion: Zoning and Building violation for 56 Willow Drive to continue at \$250.00 a day for each violation. **Moved by:** Mr. Mariutto, **Seconded by:** Mr. Binder, **Passed 5-0** by unanimous voice vote.

Mr. Sweeny: We've got a notice to appear for WD Estate 6 which is the owner of a sign on 3945 A1A South, which is the Zaharis sign, that's in violation of the sign code. They have a failure to remove a discontinued sign.

Mr. Ferris: Other than receiving notification of certified letters received, Code Enforcement has not had any communication with the owner. The registered owner did receive notification of today's Code Board Hearing.

Mr. Sweeny: I don't remember the last time we had a nonconforming sign come before this board. We can fine up to \$250.00 a day, Okay? So, I'm open to any motions or any thoughts. Any questions to ask Mr. Ferris?

Mr. Binder: Has there been any correspondence from the owners or the property, to the city?

Mr. Ferris: No, I made some calls down south to a couple different places and got transferred around. The only correspondence I received was by mail and it was for the signature return on the certified letter sent for the notice of violation and notice to appear for today's Code Board. I have stopped by the vacant restaurant a couple times, but I have never seen anyone around.

Mr. Pritchett: I'd like to motion we fine them \$250 a day.

Mr. Sweeny: Got a motion on the floor to fine WD Estate 6 LLC \$250 a day for their nonconforming sign.

Ms. Odom: I second that motion.

Mr. Sweeny: I hear a second. Any discussion? All in favor, say aye. [unison saying aye] All opposed? The aye's have it.

Motion: Fine of \$250.00 a day for failure to remove a discontinued sign at 3945 A1A South. **Moved by:** Mr. Pritchett, **Seconded by:** Ms. Odom, **Passed 5-0** by: unanimous voice vote.

Mr. Sweeny: Finally, we are at C. The notice to appear to Herald Groome III of 106 7th Street, for violating our St. Augustine Beach Commission order approving conditional use and for a right-of-way parking. Mr. Ferris, you're recognized.

Mr. Ferris: This complaint originated from Public Works regarding a parking lot created in parcel #7. Mr. Adams asked if Code Enforcement was aware of the parking lot and provided pictures. I went to the location and took some pictures and spoke with Mr. Adams regarding no permit obtained for a rights-of-way permit. It was also determined that this parking lot was in violation of a Commission order of approval for conditional use of this property. I reached out to HVG Properties, and this is where we are today.

Mr. Sweeny: This is the lot with a big tree on it, is that correct?

Mr. Ferris: Yes

Ms. Odom: And that was in conditional use too?

Mr. Ferris: Yes, this was an Order Approving Conditional Use 2019-03, by the St. Augustine Beach City Commission. Some of the sections of this order detail how the tree will be protected from damage and that no parking or storage of any equipment shall be allowed on Lot 7.

Mr. Sweeny: All right Sir, are you here to speak about the property? I will need you to state your name and address if you would.

Mr. Patrou: Yes Sir. Scott Patrou, 460 A1A Beach Boulevard, I'm the attorney for HVG Properties. I've had several conversations regarding this. They brought the code violation to my attention once they received it in the mail. So obviously, you have a picture in your packet. I wanted to provide some other pictures that are a little bit better, and I'll provide a kind of a brief overview of some of the conversations that I've had. I wanted to kind of just see this one does a little bit of a better job providing a description and a depiction of how this looks right now. Obviously, that's the subject oak tree in the background. You can see there's gravel there that's stabilized.

I just think this picture kind of really demonstrates the distance between this area and the tree, just further substantiating the fact that they're not parking up on the tree. There's quite a bit of distance here. They did all this keeping in mind, hey, there is a tree preservation agreement here. The goal is to protect this tree. We want to make sure that things are not done. You did hear a reference regarding the conditional use permit, as well as the conditional use permit references a tree preservation agreement, which actually took quite a bit of work to find. But we did end up finding it. Specifically, the section that was referenced is section number, or item paragraph, line number five in that agreement. It's talking about that there should, again, you could read it. I'll read it out loud so it's on the record. Upon issuance of the first application for construction on lots 5, 8, 9, and 10, the owner or developer shall erect a barrier around lot 7 and protect the tree from damage and that no parking or storage of any equipment shall be allowed on lot 7. I had a meeting with Commissioner Rumrell. He was one of the commissioners on the board at the time at which this was heard, and this was done. He said there was a fair to do about the tree and stuff and remembered it quite well. Their big concern at that time was that during construction somebody's going to back a tractor into it accidentally, and then appeared another lot. As you can see from the pictures, and even referenced in here, the whole conversation in that hearing. I tried to pull up the video, but there was no video recording of that actual hearing.

The next one is when it started having the video recordings. But I spoke with him. You can see in the minutes, the entirety of their conversations revolved around construction equipment and damage occurring during construction. Our position, and I think it's even referenced in here, is talking about the storage of equipment. It relates back, there's no parking of equipment. They own both houses on either side of this property. They're used as short-term rentals. There's not a lot of parking on the beach. They own this lot next door. They've done a tremendous job setting this up. They've protected it, they've got fences all around the other sides of the other houses that they own. There's nothing that's being done here that's creating a potential hazard to the tree. I put to the committee that what they've done looks 10 times better than anything else you could do. It looks very nice. When you walk down the road or you drive down, it appears very well. There's a nice border, it's tied in. When I went to look at it, that was my first impression. I was like, "And it looks really nice." Then I started calling after I had my meeting with Commissioner Rumrell.

I spoke with Mr. Adams at the Public Works Department because they were the ones that brought this up. I said, "Okay, well, if we were to take the tree preservation agreement out of this equation because there's two counts to this complaint. There's one that there was no right of way permit. Then one was tree preservation. I put to the committee that there's nothing here in violation of that agreement. As it relates to the tying in or not having a right of way permit, I asked him, I said, "Okay, well, if we were to say, Okay, well, how would you propose that we fix this? You're saying this is wrong? What do you want me to do? You want me to go scrape the rocks back three feet between the paved road?" His comment to me was, "Well, yes, you could. But it must be stabilized. If you did that, you'd have to plant grass." I said, "Okay, well, so the purpose is to make sure that there's some stabilization on the edge of the road." Because I have some other images here. My office is right on 13th Street and there's a vacant lot just a couple of blocks down from my office. This is the condition of the vacant lot. This is the condition that that lot was in before they went in and stabilized it and put stuff around it, made it look 10 times better.

I mean, the fact of the matter is, there's transient rentals on both sides. There's a hotel entrance on that street. When there's a vacant lot, people are going to pull in. They're going to park; they're going to try and get out of the road. I mean, they've got a lot of different houses and projects that they've done around the city, and everyone, they take a lot of care in what they do, and they do it to high quality. The houses around there look very nice. They did the same thing here. They took what could have looked bad and they just could have just left it alone. I mean, it would have been a fraction of the cost to drop down 12 pieces of bare grass and call it a day. They went in and framed it all out. I asked Russell and he said, "Well, you know what you should do, you should talk to Zoning about it, figure out what they say because it's a zoning issue having to tie into the street." Then I spoke with Ms. Miller, and we went back and forth a little bit. She indicated to me and I'm sure she can recite this to you. But that the code contemplates that when they're talking about those 18 feet, it's as it relates to attaching to a residence. There's no residence at this property. It's a vacant lot. She said that there's no established process for having a right-of-way permit when there's not a house. Those two are typically done in tandem. This is a novel concept here that we're dealing with, which further created that.

Well, what do you want us to do? To fix it? If you're saying, there's a problem. I mean, as a resident here and a business owner here, I don't think you can make this look any better. I guess our question to the board is, what would you have us do? I mean, I think these owners are very willing to make it right. Their goal is to make it look nice. Then I spent a few minutes today. I was like, "Man, let me just spend 10 minutes." Because I had a meeting at noon, I spent 10 minutes and I hit three streets. On those three streets, I think I found about 20 houses. A couple of lots, but mostly houses that have edge-to-edge driveways. I mean, this was on 10th Street, 7th Street, and 8th Street, which is where this or should be 7th Street. I mean, these are just all houses that I just drove around in the 10 minutes. Frankly, some of these looks nice, but they're clearly obtrusive whether they're meeting ISR, except another comment that Mr. Adams made to me as well, now there's ISR things that come into play, which is the Impervious Surface Ratios, which gravel doesn't usually factor into that. There are no issues created here by drainage by what they've done. I mean, these houses in these neighborhoods, all on these adjacent streets, it just seems like this one was a little bit of a witch hunt. I don't know why they were singled out. That's where we are. I guess our position on the board is, what would you have us do?

Mr. Sweeny: Okay. Thank you very much for your presentation. Just let me give you a moment to perhaps clarify. Certainly, there was no witch hunt. I don't think the staff were out looking for trouble. Let me help you with that there. Members, any questions?

Mr. Mariutto: When a car parks here on this lot, do they park head in, or do they park parallel to the street?

Mr. Patrou: It depends.

Mr. Mariutto: I mean, what's the design for?

Mr. Patrou: There are no signs out there saying parking lot. It's just when they have the transient rental, sometimes they have guests over. Sometimes they just have deliveries. I think it was just set up to where if a car needs to park here, get off the road, they have the place to situate without ruining the grass or being in the road. I don't think it was designed.

Mr. Mariutto: Is it big enough to park a car head in?

Mr. Patrou: Certain cars, sure, certainly.

Mr. Binder: I'm driven out of curiosity to see the tree. When I drove by, there were two cars parked head in that area. That doesn't seem to restrict anybody from parking there. Anybody wishing to go to the beach has parking spaces.

Mr. Mariutto: I mean, clearly, if the guests from the house that on either side that are owned don't park there, people are just going to park there to go to the beach anyway, right?

Mr. Patrou: As much as they're not allowed to, being private property and all, it happens all the time, which is, I think, why you see the lot down from my office is torn up all the time because people just park there.

Mr. Sweeny: I have a question, what is the historic significance of either one of these trees?

Mr. Patrou: The historic significance is, is that at the time at which this was being done... MSP hotels owned that block of property, which is the same owner that used to own the other side of the Marriott, as well as the Marriott. It was right around the time that the new codes came down regarding the limitation on short-term rentals within the medium-density zoning within the city. They came forward asking for conditional use permits. There were some citizens that raised the issue of, hey, this is a beautiful tree. We don't want to see this tree torn down. What can you do? They had the option to either deny the conditional use permits in exchange for, hey, you save this tree, we'll give you the ability to do transient rentals on this property.

Mr. Sweeny: Fair enough.

Mr. Patrou: That was the trade.

Mr. Sweeny: Members, further questions?

Mr. Mariutto: Do you know if this lot is irrigated for sprinklers or not?

Mr. Patrou: I don't know that. I'm sure I could go find out. I don't know, sorry.

Mr. Sweeny: Further questions?

Ms. Odom: The solution, I guess, could be, is that the owners apply to the P&Z for a right-of-way permit? Is that correct?

Mr. Patrou: I don't think they would have to apply to P&Z. Because I asked Ms. Miller, I was like, "Hey, is there a form I can fill out to apply for this?" Their comments were that it's not contemplated for that purpose. If the board says, "Hey, we want you to reduce the neck piece of the road to 18 feet plus five feet," I mean, I think it's a matter of approximately between four and five feet, right? If they go out there and they scrape the gravel back and they plant, grass, I'll tell you what's going to happen to it. People are going to pull over it, tear the grass up, and then the edge of the road is going to blow out.

Mr. Sweeny: Mr. Blocker, perhaps you have some general directions or options you might want to give us?

Mr. Blocker: Absolutely. Again, this board can find that this is a violation, find that it's not a violation. Obviously, you've heard, if this was automatic there wouldn't be a need for a board. Part of it is to hear the evidence. You've heard Mr. Patrou outline several competent, substantial evidence that you all can rely on. This happens from time to time with code enforcement, you're going to find these unique properties. You would have to ask Ms. Miller specifically as far as that. I mean, as you all have in front of you there is part of the order approving conditional use which does have no parking. As Mr. Patrou has pointed out, you are going to have people parking there. I am not suggesting you disregard this; I am saying we're going to have these issues regardless.

Mr. Sweeny: Is it possible? I am going to guess you don't have to answer this, that the owners don't park there because whatever section it was, I think it was four that says there's no parking. No, sorry, was it four or five?

Mr. Binder: It was Five.

Mr. Patrou: But I think if you get to read that sentence in its entirety, it says no parking or storage of equipment. The parking is specifically tied to equipment, which was based on the conversations in which this restriction was born, which was about construction occurring on the adjacent lots.

Mr. Sweeny: I don't know. I think the "or" does a lot of work for me. To me, it says no parking, no storage. Members, if you want to interrupt me, please interrupt me. I don't want to take up your time. Is it often that the owners park here? Look, I will say this, let me say this. When I look back at what the original looked like, to your point, I think this looks fantastic. Having run by this tree a billion times, I completely agree. I think what has been done here is an upgrade from where we were. That said, five reads to me that there should be no parking there. My next step would be, quite frankly, to ask for no fines, this is just me talking out loud, but ask that perhaps we send a note to our police department reminding them that there is no parking allowed on lot 7. That at least comes to their attention that there's no parking lot 7 so that perhaps at some point, somebody's going to be ticketed when they start parking here. I don't know if that helps you get to where you want to go. I would argue that we keep what you have done here, but make it noticed that there's to be no parking there and whoever parks there that they're on their own. Am I out of bounds, Mr. Attorney?

Mr. Timmons: I've been working with Mr. Adams as well because Public Works and Code Enforcement are closely related. Obviously, there's an issue with right of ways in the city. As you can tell, Mr. Patrou pointed out that it's an abundant issue here within the city with right-of-way problems. Since Mr. Adams has got into the Public Works domain, he's been working closely with us to try and alleviate that issue or at least stop issues from happening early

or preventative problems, which is why it's not a witch hunt. We're just trying to be more proactive in countering these right-of-way issues that have become so prevalent, as you've shown. I still think working with Public Works would be the best route in solving the right-of-way issues since it is technically the city's property. They're the ones that were trying to establish a process with manipulating the right of ways within the city and making sure there's guidelines met, especially with parking spots because there's guidelines and you must worry about the size of vehicles, compaction, issues with the asphalt. There are certain specifications that must be met to make sure it works, and it can be sustainable.

Mr. Blocker: This area was not considered a parking space. I understand what Mr. Patrou has pointed out, that people are going to park there, it's just natural, but the city has a policy to discourage that. Now, the reality is, having understood what the policy... the reality is people are going to park there. They've improved that space, which is really city property, to a point where it is probably better than it was before. Having law enforcement take more of an interest, maybe some signage, but this was not contemplated to be a parking space. But the nature of the circumstances in that area, people are going to pull over, unload to get out of the car, more of a temporary dropping off. But if people are not discouraged, they're going to park there, regardless. Regardless of what you all do today, this will be an ongoing issue.

Mr. Patrou: The other thing that's interesting here is there is the intersection of individual property rights. That's why my first meeting was with Commissioner Rumrell because I wanted to have a better understanding. You and I have a disagreement on what was interpreted there. If need be, I'm happy to go get some testimony or some further letter because I had that specific conversation. I think at a certain point, the city's not going to have the ability to say, "I know you got this lot..." There are obviously certain parameters in which they can dictate what happens. But to start going around and saying, "You can't park on your lot, or you can't do this." Obviously, we can't park a tractor up against the tree. But short of putting the tree in danger, which again, is a tree preservation agreement, and so the purpose of that was not to restrict parking is to protect the tree. We need to look at what was the purpose of this document. Does this use of this lot as laid out run afoul with the ultimate purpose?

Mr. Sweeny: I don't disagree. All I can tell you is that I read number five to mean to say, "No parking shall be allowed on lot 7." That's how it reads to me. All I can do is act upon this document that people agreed to back in 2019.

Mr. Blocker: Well, if I could just respond. Mr. Patrou, I understand your position. But again, this was conditional use, which is not a guarantee. That's your client came before the board at that time. That one that they did have noticed, I certainly understand how we got there. But I also think there may be a little bit of history that would be helpful to the board. I don't know if you can share some more details. But if the board will allow that, Mr. Chairman.

Mr. Brown: I'll speak just briefly because I was not involved in the process. I'm a building inspector and of course, this was dealt with through zoning issues at length when Mr. Bulu was trying to get approval to build the hotel, several proposed uses for that property where the hotel exists. He at that time owned those lots that now have some of the trees on them. There were several trees that were proposed to be protected. Then like I said, this is just my recollection from being around these meetings, is there were several trees that were proposed to be protected on property when the hotel was built. Most of them were lost through attrition or construction. I think one of the protected trees was lost because the fire department, once the parking lot was installed, realized that they couldn't get their trucks into the hotel property, so they had to lose one of those trees. I think this tree is one of those trees that was the intention was to protect this tree because it was one of the few trees that was left on that entire section

of property. There is a history that predates the hotel being built. There's probably some documentation through the Planning and Zoning meetings.

Ms. Odom: It would have been the city because the conditional use was approved by the city.

Mr. Brown: I remember lots of meetings going on about protecting some trees on that property. Slowly but surely, they had to back away and back away and back away on protecting a lot of the trees and property to allow for parking, to allow for access of fire vehicles and emergency vehicles. I think that tree was envisioned as being protected. As far as the parking and the conditional use permit, I think that was done subsequently.

Mr. Patrou: That was before my client purchased it. All this was already done, and my client came in afterwards.

Mr. Mariutto: I like what you did here. It looks nice, but the way it is done, it invites parking. I mean, it appears to be a parking lot, right? It says here also in number five that the owner or developer shall erect a barrier around lot 7 to protect the tree from damage. I think if this was a treed lot, just a wild lot, the parking would probably be limited to parallel parking down the street. If you put a barrier in the front, I mean, realistically, you're not going to stop people from parking. I mean, it's realistically. To put a barrier in the front, make them park parallel to the streets, I think that would probably solve a lot of things. Keep it so they can just line them up in there. I mean, I can see on a busy summer day, just cars packed in there. Have parallel parking in the front which will keep them away from the tree and not give the appearance of a parking lot.

Ms. Odom: If they were to do that, I guess I would ask Ms. Miller, would they have to comply with a setback as far as where they put the barrier from the road?

Ms. Miller: It would have to be on the property owned by Mr. Patrou's client and out of the rights-of-way. We generally don't allow fences in the front set back areas.

Mr. Mariutto: Even if it's not a fence per se, but poles or something to keep people from just parking there.

Ms. Odom: Didn't we do picket fences four (4) foot?

Ms. Miller: In front of structures, but we generally don't allow fences around vacant lots.

Mr. Patrou: My conversation with Commissioner Rumrell, we spoke about the perimeter of the tree and having the barrier. It came up while they were driving lulls and things were flying. He said during the time of construction, they had temporary fencing around the tree to protect it. Those threats to the tree are gone because the houses are completed, they have fences along the backyards. Also frankly, by defining the area and leaving substantial space between the defined area and the tree, I think it does help to create a mental need to not go beyond here. This other one that I showed the image of that's down the street from my office, they park all over the lot. It's not something that they own, they just go jam back in there because they're afraid somebody's going to come in and block them or otherwise. They give no heed to where even which I think would be bad, but just stacking it up in there. Now they swing it all the way back in there, and they try to cut through amongst other things. To add clarification on my comment earlier, I certainly was not trying to offend when I said witch hunt, but here is a picture from three houses down the road.

Mr. Sweeny: But again, remember, we can only act on... I look, you've got great pictures here and I suggest that you talk to our Code Enforcement people because these are in violation. We don't know about it unless someone brings it to our attention. For the most part, I think Mr. Timmons and Mr. Ferris are going to look at what people have called in and do investigations there. I don't think they're just driving around randomly like people might do for parking violations and just hit... Someone apparently brought this to our attention.

Mr. Patrou: I asked that question because there are obviously Sunshine laws and other laws. That information is required to be provided when requested under public records request. I asked about that, and it seemed that it was brought by Public Works. I frankly was relieved to hear that because rather than some person that's actively trying to find properties owned by a specific individual, it was just this one jumped out at me because we can't see ours without seeing that one. I mean, it's 150 feet wide.

Mr. Sweeny: Look, I don't disagree.

Mr. Patrou: My goal was to add clarity to that comment, not to spend any more time dwelling on it.

Mr. Sweeny: I totally get it and appreciate it.

Ms. Odom: I want to be the devil's advocate here. What do you want them to do? What's the solution? If I was the owner of this property and said, "Well, what do you want me to do? Tear up the gravel? Okay, I'll tear up the gravel." But they're still going to park there, as you've alluded to. Short of constructing no parking signs, I don't know what the owner can do, unless destroy what he's already beautified.

Mr. Patrou: We can go in with a rake and effectively separate the rock from the edge and drop down some grass to return it to its previous state. I feel it falls out of the purview of the city's ability to do anything because they're going to be people parking there that the owner has no control over. To require the owner to put up a fence would be expensive.

Mr. Sweeny: But unfortunately, we certainly must have our homeowners or landowners do the best they can to protect their property. I think that's where we're trying to go. There are two violations here, the right of way and then the violation of conditional use. I tend to agree, Berta, I'm not sure where you want to go with this. Mr. Timmons and Mr. Ferris, what do you think is best to bring that part to comply? I will say this too, you can't... on some level you've built something that makes people want to park there. I'm sure that's not what you intended to do but that's what has happened on some level here. I agree. Mr. Timmons, what can he do first on the violation for not receiving the rights of way permit?

Mr. Timmons: Right. As you guys have seen come in front of you, if work is done without a permit, they're required to go through the permit process and follow the consequences of the consequences of that. Now, unfortunately, that's going to be with Public Works. I don't really have a say on what they're going to entail for you to do. They may say that what you did is nice, but it is obvious that the intention of it is a parking lot or a parking giant space. They may require some more specific guidelines. Maybe the gravel may not do it because of the type of vehicles that are going to be parked there. Just as such, I know they had to permit one of Mr. Weeks's parking lots that he put on the side of his house. They had to be up to a certain specification of weight-bearing loads. That's what I would suggest with the right of ways issue is just to go through the process, get a permit, see what Public Works has to say and work with them to try and establish common ground and what is needed to make it work.

Mr. Patrou: I had that specific phone call and he told me to speak with Zoning about it to figure it out because it has more to do with width. The zoning requirements, they told me there's not a process for that because there's not a residence there.

Mr. Blocker: Well, I think right now, Mr. Chairman, I think this is one of those situations that comes up where you have the commonsense approach, and we had the blackletter rules. Obviously, the city's view, let me clarify, sir, the city has a policy of not parking here. People are going to park there regardless. I think we've established that. What the landowner tried to do, whether inadvertently or overtly, was to create a way to control that which people are doing already. You all can find them in violation and go through that process. I think what you outlined earlier, notifying law enforcement, having them do it. We could ask them to put up signs and parking signs. People are still going to do that. I do agree with Mr. Patrou. I think there's a point where this problem probably existed prior to his client's involvement or even prior. Again, you all are well within your rights as you all have discretion. You're supposed to follow the rules if this was automatic, we wouldn't have a board here to evaluate this. You all can use your good judgment and good sense to reach a conclusion. You could find that there's a violation, you go through that process, or I think, Mr. Chairman, you outlined an alternate course of action, if I understood it correctly.

Mr. Patrou: You can also find, correct me if I'm wrong, that there's no violation, correct? I mean, the purpose of the board was to interpret it and say, "Okay, here's the rules. Here are the facts. Does this in fact violate the rules?"

Mr. Blocker: Well, I agree. I think the issue just... and this is not to go back. I think the challenge is part of your presentation was that this would be a place for people to park. I think you mentioned that. Correct me if I'm wrong. I think you mentioned that your client contemplated when they made this change that this could be a place where people can park overnight. I think I heard that. Is that correct?

Mr. Patrou: I think that they've created this under the understanding that it's going to happen whether it was there.

Mr. Blocker: No, I completely understand. But just a strict looking at the conditional use, that would violate it. Whether it's intentional or unintentional. I understand their good intentions, but I think the board with those facts in front of them, and this is not to demean your client, but your client's dealing with a difficult situation. It was designed as a parking space which would violate the conditional use. You've heard some strong arguments here about why there could be an alternative solution. His client is in a difficult position, and people are going to park there regardless as he pointed out. The only alternative may be to add no parking signs outlying you will be towed if you park here.

Mr. Patrou: Just to be clear to my comment on finding that there wasn't one, I was pertaining more along the lines of not having a right of way permit because there's no process for which to obtain a right of way permit. How could we be in violation for not obtaining a right of way permit?

Mr. Mariutto: I hate to say it, but if we don't find you in violation, we pretty much proved the de facto parking lot here.

Mr. Sweeny: I will speak for myself; I think there are a couple of violations here. I don't know how overt they were when this was built, but they are inviting people to park here. They have also made it beautiful at the same time. So, it's one of those things. I will get to a motion that there are no parking signs placed here, but I think that's also going to ugly up the area as well when you put those up. In my time running around the city, I know some people put captain's ropes and boat rope across their parking spot to block people. I don't know if that's something that can be

done. I don't know if you'd use white instead of yellow captain's rope. Maybe it'll look better because I think yellow would take away the beauty you've brought to the beach, but we certainly must stop people from parking here. I think there needs to be some type of mechanism that lets people know no parking is allowed here. I think there probably should be a fine; I am open to what that number should be. I also believe that we should let law enforcement know that there's to be no parking here as we understand there's no parking there. If the complainant feels as though there should be parking here, then go through whatever process needs to happen so that you're allowed to park here. I don't know if you must re-litigate.

Mr. Blocker: As this is a difficult scenario, a potential course of action would be for a motion to table the issue. Staff can work with Mr. Patrou and come up with a solution to resolve this. I think we have had some good recommendations.

Mr. Patrou: That sounds good.

Mr. Sweeny: Members, I will accept any motions to table to have staff work with HVG Properties work on the two violations of parcel number seven.

Mr. Mariutto: I just have a quick question.

Mr. Mariutto: Is that out of the realm of possibility to landscape or hardscape in the front here, where we discourage parking?

Mr. Patrou: The problem is, is that the first five feet from the concrete is city right of way. Obviously, nothing can be put in the city right of way. That's what happens on all these streets, as people come up and they park in the right of way, for which an individual property owner that's contiguous up into that, they can't do anything in that property.

Mr. Mariutto: Five foot would invite a parallel park?

Mr. Patrou: Correct. I mean, your assumption on that is as good as mine.

Mr. Mariutto: Right. I mean, well, you can't park.

Mr. Patrou: You can't shoot back. Yes.

Mr. Binder: It sounds like additional discussions are going to be taking place. In the interim, I agree with what Mr. Sweeney said about putting the captain's rope up and no parking signs up. Leave the gravel because that may just end up staying down because we don't know. To limit further violation of parking, the area should be closed off with captain's ropes and no parking signs.

Mr. Blocker: Mr. Binder, that's an outstanding idea. I think the one challenge is no structures there. If they were to block off the area with captains' rope, there would have to be some structure to attach it to which could potentially lead to an additional violation. I think staff can come up with some creative solutions they can go through. We can work with Mr. Patrou, and his client, if you all are willing to do that. I think we can come up with a solution. Does that make sense?

Mr. Sweeny: Makes sense to me. Again, I will entertain any motion to table this issue to have city staff work with HVG Properties on the two violations. At the same time, I'd like to let law enforcement know that there's to be no parking at this parcel. Anybody?

Motion: City staff work with HVG on property violations and let Law Enforcement know that there's to be no parking at this parcel, **moved by** Ms. Odom and **Seconded by** Mr. Mariutto, **passed 5-0** by unanimous voice-vote.

Mr. Sweeny: Good luck. Thank you. Hope it's quicker than this. But it is beautiful. They have done a good job beautifying the city. Lord knows we need more of that. Members, any further discussion for the board? All right. Well, then, since we started with Ms. Odom, Ms. Odom moves we rise.


[END]

VI. BOARD COMMENT

VI. VII. ADJOURNMENT



Kevin Mr. Sweeny, Chairman



Lacey Pierotti, Recording Secretary

(THIS MEETING HAS BEEN RECORDED IN ITS ENTIRETY. THE RECORDING WILL BE KEPT ON FILE FOR THE REQUIRED RETENTION PERIOD. COMPLETE AUDIO RECORDING CAN BE OBTAINED BY CONTACTING THE CITY MANAGER'S OFFICE AT 904-471-2122.)