

**CITY OF ST. CLOUD
CODE ENFORCEMENT MEETING
January 15, 2020**

MINUTES

- I. **CALL TO ORDER** - Special Magistrate Smith called the meeting to order at 3:02 P.M.
- II. **PLEDGE OF ALLEGIANCE**

At this time, Magistrate Smith introduced himself to the audience and all those intending to testify were sworn in.

- III. **PUBLIC HEARINGS** -

- A. **NEW CASES** -

- CASE #2019-02095- Southland Plaza Inc. Simple Pawn**

- Location of Violation:** 924 13th Street, St. Cloud Florida

- Violation:** Land Development Code, Section 3.19.3 (A)

- Description of Violation:** Failure to prohibit but rather allowed new signage to be erected prior to obtaining a permit.

Code Enforcement Officer Melissa Howes presented the case in narrative form and provided an evidence packet and a PowerPoint presentation. At the conclusion of her presentation, she noted that the Respondent was not present. Officer Howes recommended that the property be found in violation of failure to prohibit but rather allowed new signage to be erected prior to obtaining a permit by the time specified. She recommend that the Respondent be given until January 31, 2020 to either obtain the proper permit or remove all signage, or pay a fine in the amount of \$100.00 a day until compliance is met She further recommended that the respondent pay the administrative cost in the amount of \$215.40 to be paid within seven days of the written order of the Special Magistrate.

Magistrate Smith found in favor of the city. He found that there is a violation for erecting new signage without proper permits and accept the City's recommendation of a compliance date of January 31, 2020 to come into compliance with the code either by removing the signage or obtaining a permit. If not brought into compliance by that date a fine of \$100.00 per day shall run for each day that the property remains in noncompliance with his order. He ordered the respondent to pay the city for administrative cost in the amount of \$215.40 to be paid within seven days of the Magistrate's written order.

- CASE #2020-158- Fernando Homs PA, Owner**

- Location of Violation:** 4601 Neptune Road, St. Cloud Florida

- Violation:** Land Development Code, Sections 3.19.11 (A).

Description of Violation: Failure to prohibit but rather allow the Electronic Variable Message Sign at this location is not in compliance with the Operational Standards and Brightness of the Land Development Code

Jack Morgeson introduced Desiree Sanchez, Council for the Respondent and give a quick opening.

Magistrate Smith asked Ms. Sanchez if she had anything to open with and Ms. Sanchez gave her opening statements. The Magistrate asked Ms. Sanchez if it was her position today that the sign complies with the code. Ms. Sanchez responded that it does not. The Magistrate asked her to explain the legitimate governmental interest. Ms. Sanchez further explained her legitimate government interest. The Magistrate further asked what used is being eliminated as he has not heard the case yet and some of this maybe a little premature. Ms. Sanchez explained her focus. She explained that she brought an expert on the sign and also Karen from Academy for Kids who also has the same sign and has yet received a violation. She wants the City to prove that there is a legitimate government interest. The Magistrate asked her if her argument today that code enforcement must show a legitimate governmental interest whenever they enforce a code or is it her argument that the City must show governmental interest in adopting a code that infringes upon the first amendment. Ms. Sanchez said that what she is saying with this particular case because she can take the position that this ordinance is illegal altogether but she is not taking that because it is a deeper issue that will require the entire community involvement. Her client should be grandfathered in. The Magistrate stated that he is a governmental attorney and he understands these issues but he wants to know if Ms. Sanchez's argument that code enforcement cannot enforce a code that is in the books unless they can prove legitimate governmental interest in the enforcement or are she saying that legislatively the city could not adopt it because they did not have a legitimate governmental interest in the adoption. Ms. Sanchez said that she would actually say both. The Magistrate asked for case law. She said she asked the City to provide that. The Magistrate than asked the question, "adoption or enforcement that is what he is trying to nail down right now", it's important to him because he has no power today to say that the City's ordinance is unconstitutional, he can only interpret the ordinance as it is written and adopted. Ms. Sanchez agreed. The Magistrate stated he cannot do that only a court can do that, all he can say is does the ordinance say what they say it says. He can't say that the ordinance was improperly adopted so if Ms. Sanchez argument is that they cannot enforce it unless they can show legitimate governmental interest he needs her to make that argument because he is not sure he agrees with it. Ms. Sanchez stated that they cannot enforce an ordinance that is not substantiated. The Magistrate said that an ordinance that has been properly adopted is presumed valid until a court says it's unconstitutional. Ms. Sanchez stated that he was absolutely right. She further stated that the community has an interest in the passing of this ordinance, the community was not properly notified of the hearing that was to take place on this vote for the ordinance. They will likely have to sue the City to find this unconstitutional. She said that if the magistrate has to take the ordinance by its word. The Magistrate stated he thinks he has to, he does not think he has a choice because when it comes to the validity of the ordinance he has to presume the ordinance is valid until the courts say it is something different, so what we are talking about today is the code enforcement action and whether or not the code enforcement has properly cited and prosecuted this case and she started off with telling

the magistrate that they do not comply with the ordinance. Ms. Sanchez said that their due process rights were violated and the Magistrate said that he will get to that.

Jack Morgeson responded briefly to clear up a couple of things. The history that he wants on the records is that the email Ms. Sanchez sent in November was addressed to Mrs. Sparkman and asked certain information about how did the City get to a decision that lead to the adopted of this ordinance, that was adopted he understands back in 2016. Mr. Morgeson's partner Dan Mantzaris, the City Attorney, wrote Ms. Sanchez a page and a third letter dated January the 8th and addressed specifically, the issue of the adoption of the ordinance and the grandfathering issue that stated that because the ordinance was dealing with an existing sign, not asking that the sign be removed, but only regulate the time, place, and manner that the sign would operate, the grandfathering issue was not an issue. The request for records that was proponent to Mr. Mantzaris to the extent that it could be provide and responded to was done so.

Mr. Morgeson later asked for time for compliance with the discretion of the Magistrate these issue about the enforceability of the ordinance, the adoption of the ordinance, he understands that those are not proper for today and they understand that there is legitimate concern from the other side and they are respectful of those, but they are just not simply relevant here for today.

Code Enforcement Officer Pam Neal presented the case in narrative form and provided an evidence packet and a PowerPoint and video presentation. Officer Neal recommended that the property be found in violation of allowing the Electronic Variable Message Sign at this location to not be in compliance with the Operational Standards and Brightness of the Land and to have the sign in compliance by January 31, 2020 or pay a fine of \$250.00 a day until compliance is met. She further recommended that the respondent pay the administrative cost in the amount of \$360.10 to be paid within seven days of the written order of the Special Magistrate.

At this time the Magistrate gave Ms. Sanchez the opportunity to cross examine Code Enforcement Officer Neal.

Mr. Morgeson was allowed time to cross examine Code Enforcement Officer Neal.

The Magistrate requested to hear from the expert and testimony was given by Jim Thomas who owns Ed's Systems an expert on EVM signs and Ms. Sanchez asked questions.

Mr. Morgeson crossed examined Mr. Thomas' testimony.

Ms. Sanchez requested that the administrative cost not come into play here and not penalize her client.

Magistrate Smith found that there is a violation on the subject property for the reasons stated in the notice violation and for the reasons stated in the testimonies and not rebutted or re-feuded by the Respondent. He does find that the violation exist. He will give a little bit more time for most of those violations than what code enforcement has asked for, code enforcement had asked for a compliance by January 31st, and he does recognize there may be some scheduling issue and there may be some time in getting that list taken care of so he will give until February 15, 2020 to cure all but one of those issues, and the one that he still want to see cured by January 31, 2020 is the night time issues because he recognizes the difference in video and it's on a cellphone and light being emitted from the

cellphone but there is a lot of glare there and he thinks the expert eluded to it and there is a problem with the nighttime display with that sign. He has seen enough of them and videos of enough of them, there is an issue there and that needs to be corrected because one can argue in court all they want, the overall safety impacts of moving pictures on signs but when it's at night time and there is a flash it blinds you and that does cause accidents and he doesn't think anyone in the room can disagree with that, so he is going to accelerate the compliance date for the night time issues and to come into compliance with the hours of operation as it is presented in the code 1, but 2 a very simple fix to correct that dimmer occurs at night and if it is on a timer maybe the timer is off and get that fixed so that when it is dark outside that sign is not blinding people. If either of those issues are not brought into compliance by the date which he has set, January 31st for the night display and February 15th for the other issues, he will actually stagger the finding until potential fines this are not actual fines until the time runs out until compliance and you do not met but if that night time issues, the night time display, the dark display is not resolved by January 31st a fine of \$250.00 per day shall accrue as this one is the most greatest threat to the public. The February 15th date if those items are not resolved by that date a fine of \$100.00 per day. He ordered the respondent to pay the city for administrative cost in the amount of \$360.10 to be paid within seven days of the Magistrate's written order.

UNFINISHED BUSINESS - None

V. NEW BUSINESS –

REQUEST FOR REDUCTION OF FINE/LIEN UNDER \$50,000

CASE #2017-1086- Jeremy Adiken, Owner

Location of Violation - 1121 Wyoming Ave, St. Cloud, Florida

Original Hearing date - May 17, 2017

City Attorney Jack Morgeson offered a summation of the case and the request for the reduction of fine/lien. The Respondent was not present. Special Magistrate Smith found in favor of the request for a reduction of fines for a settlement total of \$500.00, with a caveat that if not paid within 30 days that it revert to the original number.

REQUEST FOR REDUCTION OF FINE/LIEN UNDER \$50,000

CASE #2019-1845 - Clara Johnson, Owner

Location of Violation – 721 McKay Street, St. Cloud, Florida

Original Hearing date - September 18, 2019

City Attorney Jack Morgeson offered a summation of the case and the request for the reduction of fine/lien. The Respondent was not present but requested that she appear via communication that was part of the packet. Special Magistrate Smith found in favor of the request for a reduction of fines for a settlement total of \$440.10.

VI. NEXT SCHEDULED MEETING - February 19, 2020

VII. ADJOURNMENT - Magistrate Smith adjourned the meeting at 4:10p.m

Submitted by _____ Date _____
Claudia Klockars, Clerk to the Magistrate