



## SPECIAL MAGISTRATE HEARING MINUTES

Wednesday, April 24, 2024 at 3:00 PM

City Commission Chambers – 105 S. 2ND Street, Flagler Beach, FL 32136

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ALL MEETING ITEMS WILL BE CONTINUED UNTIL MEETING IS COMPLETE.

**1. Call the meeting to order**

Meeting called to order by Magistrate Popp at 2:59pm

**2. Roll Call**

Drew Smith, City Attorney, Michele Ficocello, Clerk to Magistrate, John Gifford, Code Enforcement, Matt Doughney, Chief of Police

**3. Approval of Meeting Minutes**

a. March 27, 2024

Approved

**4. Request To Identify Persons Having Cases on The Agenda**

**5. Parking Citation Appeals**

a. Citation No. **2375**; APPELLANT: Maria McGovern; POLICE OFFICER: Chief M. Doughney #7066

Corrected citation number 2380. Appellant was present and sworn by the Clerk. Chief Doughney was present and sworn in by the Clerk. Appellant stated name, Maria McGovern and address, 29 Wendlin Lane, Palm Coast, FL, for the record. Citation was issued for parking on a sidewalk. Appellant testified to being a driver for many years and thought she had parked legally, not realizing she had parked on the sidewalk. Appellant stated another driver was present at the time and also received a citation. Appellant stated she did go to the police department after receiving the citation to explain her side and the concerns over the limited parking in Flagler Beach. Appellant also stated the fine is much higher than other municipalities. Magistrate Popp agreed parking in the City is a challenge, but it does not negate the legality of parking improperly. Magistrate Popp explained the fines are set by the City Commission and the fines are set higher to assist with compliance. Chief Doughney testified parking in the City is a quality of life issue and as the Chief, he does go out and write citations. He observed two vehicles parked on the sidewalk and also in the road and both are considered violations. Chief Doughney explained he only wrote one citation each for both vehicles for parking on the sidewalk. City Attorney inquired what is the threshold for writing a citation for parking on the sidewalk. Chief Doughney explained in looking at the pictures that were submitted, could a person in a wheel chair be able to pass safely and it was determined in this case the sidewalk was obstructed and could not be utilized. Magistrate Popp emphasized the point of obstructing the sidewalk and the safety concerns associated with that. Magistrate Popp inquired as to the City's position of a reduced fine and community education. City Attorney agreed with request of Magistrate. Magistrate Popp gave Appellant the option to pay original fine or fifty percent reduced fine and community education. Appellant agreed to reduced fine and community education. Magistrate Popp ordered Appellant to pay reduced fine of \$50.00 and education of ten (10) drivers on safety issues of parking on the sidewalk. Appellant is ordered to submit completed community education form to the Clerk within sixty (60) days.

b. Citation No. **P00734FB**; APPELLANT: Keith Hopper; POLICE OFFICER: Sergeant J. Bingham #7058

Appellant was present and sworn in by the Clerk. Sgt. Bingham was not present, but submitted an Affidavit in Support of Citation along with photographic evidence. Appellant stated name, Keith B. Hopper, and address, 3600 S Ocean Shore Blvd # 512, Flagler Beach, FL 32136, for the record. Citation was issued for parking in the wrong direction. Appellant quoted the City's mission statement, reading it from the wall. Appellant testified the parking rules in the City are not clear due to several concerns to include, cost of fine, construction, events, signage, layout of streets. Magistrate Popp inquired if the Appellant knew what violations occur when you park in the wrong direction and explained the safety concerns associated with wrong direction parking including moving violations. Appellant testified he was unable to tell if the road he parked on was a one way street. Magistrate Popp and Appellant engaged in discourse regarding citation. City Attorney inquired if Appellant had observed the direction of traffic being that Appellant had stated he was eating lunch within eyesight of his parked vehicle. Appellant responded he did not. Appellant stated he took pictures on other days of the same area and did not see those vehicles being cited for illegal parking and requested the City be consistent in their issuance of parking citations. Magistrate Popp and the City Attorney clarified the Appellant was not the only citation appeal on the agenda. Magistrate Popp stated he would add another \$100.00 fine onto his order if the Appellant continued to be argumentative and show no appreciation of the violation committed. Appellant continued to argue the point of the City needing to be consistent with the issuance of parking tickets and would take this matter to a higher court if needed. Magistrate Popp offered Appellant the option for a reduced fine and community education. Appellant declined and continued to state he would pay \$300.00 and take this matter to a higher court. City Attorney stated the Appellant just waived his objection and in turn waived what he would be taking to a higher court. Appellant stated he would pay the fine. Magistrate Popp gave Appellant one more chance to have a reduced fine and community education. Appellant again declined. Magistrate Popp ordered original fine paid plus \$100.00 administrative cost. Appellant continued to argue his case as he exited the room.

- c. Citation No. **P00730FB**; APPELLANT: Margaret Harding; POLICE OFFICER: Officer K. Jones #7069

Appellant was present and sworn in by the Clerk. Ofc. Jones was not present, but submitted an Affidavit in Support of Citation along with photographic evidence. Appellant stated name, Margaret Harding, and address, 2143 S. Central Avenue, Flagler Beach, for the record. Citation was written for parking on the sidewalk. Magistrate Popp acknowledge the Appellants medical condition at the time the citation was issued after reviewing what was submitted by the Appellant. Appellant testified she was not the driver that day due to her medical condition and thought where they parked was legal. Magistrate Popp inquired of the City Attorney about pavers and what is designated as parking. City Attorney clarified there is some confusion with the pavers as the red brick pavers are on the sidewalks and are not for parking. The crosshatch pervious pavers along the roadway are designated for parking. Magistrate Popp stated taking into consideration the Appellant's demeanor and recognition of the violation, he would be inclined to order community education. The City Attorney agreed based on all the circumstances. Magistrate Popp ordered Appellant to educate ten (10) drivers about parking on the sidewalk and gave sixty (60) days to return the completed community education form to the Clerk.

- d. Citation No. **1103**; APPELLANT: Johnathan Watson; POLICE OFFICER: Officer M. Snyder #7086

Appellant was present and sworn in by the Clerk. Ofc. Snyder was not present, but submitted an Affidavit in Support of Citation along with photographic evidence. Appellant stated name, Johnathan Brock Watson and address, 108 Valentine Point Road, Irmo, SC 29063, for the record. Appellant stated he now resides in Flagler Beach. Citation was issued for parking on the sidewalk. Appellant testified when he initially parked he had no knowledge that he parked on the sidewalk as there were cars in front and behind him. Appellant stated he parallel parked in between the parked cars. Appellant stated he did not realize until after he came back to his car and the other cars had left that he had parked on the sidewalk. Appellant admits he committed the violation due to lack of recognition.

Magistrate Popp inquired as to the City's disposition. The City Attorney stated considering all the circumstances and lack of intent the City would accept an alternative remedy. Magistrate Popp ordered beach cleanup and ninety (90) days to complete. Appellant is ordered to return completed community service form the Clerk.

6. New Cases - Code Enforcement

- a. Case # **EEN24-0012**; Bernie & Elizabeth Joerger; ADDRESS OF VIOLATION: 916 N Ocean Shore Blvd; TAX PARCEL ID NO. 01-12-31-1100-00170-0160; VIOLATION: City of Flagler Beach Code of Ordinances Chapter 6, Beaches and Recreation Sec. 6-9 (a) (b) (c)

Respondent was present and sworn in by the Clerk. Code Enforcement Officer John Gifford was sworn in by the Clerk. Respondent stated names, Bernie & Elizabeth Joerger and address, 345 N 11th Street, Flagler Beach, for the record. Mr. Gifford testified a mutual friend of the Respondent inquired with him regarding the dunes and allowing them to clean up the area i.e. cutting a path to the dune walkover. Mr. Gifford stated the mutual friend conveyed Mr. Joerger wanted to beautify the area in front of the dune walkover which is part of Respondent's property. Mr. Gifford explained to the mutual friend he could mow a strip of grass in front of the dune walk over steps for access, but by the time it got back to the Respondent he was told he could mow the entire area in front of the dune walkover. Respondent clarified the area was trimmed with a weed eater, it was not mowed. Magistrate asked for clarification on what exactly is the issue. Mr. Gifford explained it is strictly the trimming of the vegetation. Mr. Gifford explained part of the vegetation was trimmed in the FDOT right of way and FDOT was contacted. FDOT's response was the vegetation is growing back and a non issue. Mr. Gifford testified there had been many complaints funneled through the City from various Staff and Elected Officials. Magistrate Popp inquired if the vegetation is growing back, is this violation self curing. Mr. Gifford agreed it was self curing and close to being back to its original state. Respondent agreed there was a miscommunication and his intent was only to cleanup the area. Magistrate Popp expressed the importance of protecting and preserving the dune vegetation system. City Attorney clarified when this case first came to Code Enforcement damage to the vegetation may have been irreparable, but as of today it appears to be self curing. Magistrate Popp ordered this case closed.

- b. Case # **EEN24-0024**; Thomas T & Monzell Turner; ADDRESS OF VIOLATION: 1816 S Daytona Avenue; TAX PARCEL ID NO. 18-12-32-2750-00270-0050; VIOLATION: 2015 International Property Maintenance Code, Section 303 Swimming Pools, Spas and Hot Tubs: 303.2 Enclosures

Respondent was not present. Code Enforcement reported on case to include photographs and timeline of case for pool not being properly secured. Mr. Gifford testified the temporary fencing in place at the property is not sufficient per the Chief Building Official. Mr. Gifford clarified for the Magistrate he has not been able to get a response or compliance from the Respondent since the case began. Mr. Gifford stated he hand delivered the notice of violation and the notice of hearing as the mail has been returned. Magistrate Popp expressed his concerns for the public especially children around an unsecured pool as well as the Respondent's unresponsiveness. The Clerk was able to obtain a mailing address for the owner, but no notices have been sent to that address as of this hearing. City Attorney expressed the need to contact the actual property owner and not the family currently living in the home now. Mr. Smith continued, the construction fencing mitigates the situation a little, but a permanent solution needs to be in place. Magistrate Popp proposed giving Respondent two (2) weeks to apply for a building permit and 30 days to have the work completed. City Attorney agreed. Mr. Gifford is in contact with the contractor doing work next-door. City Attorney will draft an order to be send out. The Clerk will send the order to the property owner's new mailing address. Magistrate Popp asked all the previous orders and notice be attached to the order. Magistrate Popp ordered if there is no compliance with the details outlined, a fine of two \$250.00 a day will be imposed retroactively to this hearing date. Respondent is also ordered to pay administrative costs of \$24.00. A status hearing is ordered for the May 2024 hearing date.

- c. Case # **EEN24-0027**; Goodwin Fred & Cheryl H&W; ADDRESS OF VIOLATION: 904 S Daytona Avenue; TAX PARCEL ID NO. 12-12-31-4500-00540-0020; VIOLATION: City of Flagler Beach Code of Ordinances Section 105 Permits [A] 105.1 Required

Item pulled from agenda. Code Enforcement reported violation cured.

- d. Case # **EEN24-0030**; Olsen Pamela M; ADDRESS OF VIOLATION: 2080 N Ocean Shore Blvd; TAX PARCEL ID NO. 36-11-31-5630-00040-0080; VIOLATION: Florida Building Code 8th Addition (2023), SECTION 1015 GUARDS, 1015.1 General

Item pulled from agenda. Code Enforcement reported violation cured.

7. Status Updates - Code Enforcement: NONE

8. Other Business

Code Enforcement reported no new cases as of this date. The Clerk reported four (4) new parking citation appeals on the agenda as of this date.

9. **Adjournment** - 4:12pm