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## CITY OF STONECREST, GEORGIA

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### *Construction Board of Appeals*

*Kerry Williams, P.E., PMP, Chair*

*Clara DeLay, Esq., Vice Chair*

*Mike Burdette, Secretary*

*Gregory Maxwell*

*H. Leroy Lark, P.E.*

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### **VIRTUAL MEETING AND HEARING – AGENDA**

Monday, November 15, 2021, at 6:00 p.m.

Citizen Access: *Stonecrest YouTube Live Channel*

- I. CALL TO ORDER** – by Chair Kerry Williams at 6:04pm.
- II. ROLL CALL** – all members present with the exception of Gregory Maxwell.
- III. APPROVAL OF AGENDA**

**Motion** – made by Vice Chair Clara Delay to approve the November 15, 2021 agenda. Seconded by Member Mike Burdette.

**Motion passed unanimously.**

- IV. REVIEW & APPROVAL OF MINUTES**

**Motion** – made by Vice Chair Clara Delay to table the minutes from the October 27, 2021 Construction Board of Appeals meeting. Seconded by Secretary Mike Burdette.

**Motion passed unanimously.**

- V. PUBLIC HEARING**

- a. Metro Green Appeal**

Introduction by Attorney Valorri Jones with the Law Firm Fincher Denmark, representing the City of Stonecrest as a part of this appeal.

Brian Easley, Attorney for Metro Green stated that he submitted a written brief and exhibits, confirming receipt by Board. Atty. Easley stated there are two fully completed buildings on the property, that are a part of the Metro Green facility, to which the Building Official has refused to issue a Certificate of Occupancy.

Atty. Easley has brought a Court Reporter to the hearing and would like to submit a copy of the completed transcript to be included with the appeal. There was no objection.

Atty. Easley also stated he has spoken with Ms. Katz regarding a certified copy of the City of Stonecrest ordinance. It was confirmed that there is currently an audit of the ordinance, preventing a certified copy being available to anyone. A certified copy of the Charter is included in the exhibits.

1<sup>st</sup> Witness/Wayne Raffield was sworn in by Atty. Easley. Mr. Raffield is the Project Manager for the General Contractor, Metal Building Associates Inc, that built the two buildings and handled permitting, construction visits, change orders and had conversations regarding inspections with Kerry Caldwell. The role of the general contractor was to obtain the building permits, physically build the building, and handle any disputes at the building address, 5152 Snapfinger Woods Drive. One building was 1250 sq ft and known as the scale house and was the gate keeper for trucks bringing construction material into the site. The second building was the main structure/processing building, which was 75,000 sq ft, known as the processing building and contained construction materials for disbursement. Both buildings are 100 percent complete at this time. Metro Green paid Metal Building Associates Inc. just north of \$2,900,000.00. Metro Green obtained a land disturbance permit from the City of Stonecrest thru another contractor. as well as building permits for both buildings, totaling approximately \$53,000.00. An approval was also needed from the Dekalb County Fire Marshall.

Mr. Raffield received email from Mr. Caldwell on April 15, 2021 referencing the Certificate of Occupancy and inquiring if Pamela Price had issued it because he was out of the office. communicating he had received correspondence from the City Attorney and he would not be able to issue the Certificate of Occupancy to Metro Green due to it being a violation of the state law. Mr. Raffield stated at that time, all inspections were complete and he was waiting on the letter from the Fire Department for the city to issue a Certificate of Occupancy. The letter was received May 4, 2021. Atty. Easley addressed a letter from Kerry Caldwell sent on May 6, 2021 stating he could not issue the Certificate of Occupancy because it was in violation of state law and the local ordinances. No explanation had been given before the email was sent.

Atty. Valorri Jones clarified Mr. Raffield's understanding of the requirements under the City's Ordinances for issuing a Certificate of Occupancy. Atty. Jones reviewed

The City of Stonecrest Ordinance, Section 7-143 (b) 1, stating: a Certificate of Occupancy shall not be issued by the Building Official until the building structure and intended use complies with all applicable requirements of the zoning ordinance, all construction is complete and all required final building, plumbing, mechanical, gas, electric, fire, health, vegetation protection and site drainage inspections have been performed and approved. Mr. Raffield had never seen this or any City of Stonecrest ordinance and was not familiar.

Atty. Jones also reviewed the City Charter, Section 6.02 stating: during a two-year transition period beginning May 8, 2017 and ending May 8, 2019, all ordinances of Dekalb County shall remain applicable within the territorial limits of the City unless otherwise amended or replaced by the City of Stonecrest. Mr. Raffield stated he was not aware the City was under the authority of the Dekalb County Ordinance as it related to Solid Waste Management. It was also his understanding that Metro Green complied with and passed all inspections, and that zoning was adequate. Atty. Jones also shared the Intergovernmental Agreement between Dekalb County and the City of Stonecrest, dated October 26, 2018, Tab 5, Section 8.1 stating the County has the authority to enforce the City's Solid Waste collection and disposal code and related provisions within the City's boundaries. She also referenced Section 8.3 stating County personnel are vested with the additional power to enforce the applicable ordinances.

Atty. Easley objected stating Atty Jones is not speaking about any specific authority that the County or City may have, the timing has not been established relative to Metro Green's construction, and that the Solid Waste Management questions regarding municipal waste collection are not relevant in respect to the issuance of the Certificate of Occupancy. Atty. Jones responded stating it had already been established the Certificate of Occupancy is not to be issued by the Building Official until the building structure and intended use complies with all applicable requirements. Mr. Raffield confirmed he was not aware that the City had to confirm to any ordinance Dekalb County as far as waste management went.

Atty. Jones referenced Tab 6 which was an email dated August 31, 2018, from Tracy Hutchinson with Dekalb County. Ms. Hutchinson stated that based on information provided regarding the proposed facility, which in this case is Metro Green Facility, it appears to be not consistent with the Dekalb County joint Solid Waste Management Plan. Mr. Raffield was not aware that Dekalb County still had any authority over any of it but believed the City was under its own plan and had its own authority.

Mr. Raffield stated that in an email dated April 15, 2021, Mr. Caldwell stated that all onsite inspections had been completed and they were waiting on approval from Dekalb County Fire to give their approval. He did not know Metro Green did not

comply with Dekalb County. He stated no one from City of Stonecrest ever informed him of the IGA between the City of Stonecrest and Dekalb County and that no one from the City ever reached out to him or anyone at Metal Building Associates to inform them of the problem with zoning at the Metro Green facility.

2<sup>nd</sup> Witness/Kerry Caldwell was sworn in by Atty. Easley. Mr. Caldwell is the Chief Building Official for the City of Stonecrest and in charge of issuing the Certificate of Occupancy's for completed buildings located in the City of Stonecrest. Mr. Easley reviewed an email from Mr. Caldwell dated April 15, 2021, stating once the Fire Department approves the changes and signs off on the final inspection, he has asked Pamela Price, Permit Technician and Monty Hill, Senior Inspector with the City of Stonecrest to issue to the Certificate of Occupancy for the Metro Green facility. That was Mr. Caldwell's understanding on April 15<sup>th</sup>, the date the email was sent.

Atty. Easley also reviewed an email from Mr. Caldwell, dated May 6, 2021. The email stated Mr. Caldwell could not issue the Certificate of Occupancy because the Metro Green facility was in violation of state law and the local ordinances. Mr. Caldwell is not personally refusing to issue the Certificate of Occupancy but following the codes and ordinances. Both buildings were constructed, pursuant to building permits issued by the City. The City also issued a Land Disturbance Permit.

Atty. Easley reviewed a letter from the City dated April 4, 2018 confirming Metro Green was zoned M/Light Industrial within the City of Stonecrest. Atty. Easley reviewed Ch 27, Sec 4-1.3 of the City of Stonecrest, Code of Ordinances, Zoning section, showing permitted uses within each zoning classification. Mr. Caldwell could not confirm the recycling plant by right is allowed in the M zoning classification as he is not a Zoning Administrator. Atty. Jones addressed the Board to note Mr. Caldwell has already testified he is not the Zoning Administrator.

Atty. Easley referred back to the code, Sec 7-14, B1, referring to items required prior to issuing a Certificate of Occupancy. Mr. Caldwell confirmed that on May 6, 2021 he received information that the use of the building was not approved in the County's Solid Waste Management Plan and that the County had rejected the use of the building for that usage. Since it did not meet the Solid Waste Management Plan, Mr. Caldwell could not issue the Certificate of Occupancy. Mr. Caldwell also stated that information was withheld from Zoning prior to issuance of the permits regarding the County denying the use of the building according to their Solid Waste Management Plan. Permits would not have been issued if the City of Stonecrest was given this information by Metro Green that an Administrator had not signed off on their property and had denied their request. Mr. Caldwell was also not made aware by Metro Green that they were not in compliance with Solid Waste Management Plan

and that the Dekalb Division Director emailed representatives from Metro Green informing them they were not in compliance.

Atty. Jones reviewed email from Michael Harris on October 13, 2018, stating Stonecrest was a part of Dekalb's Solid Waste Management Plan. She also reviewed an email sent on February 27, 2019 from Tracy Hutchinson, with Dekalb County stating the Metro Green facility was not consistent with the joint Solid Waste Management Plan.

Mr. Caldwell stated if he had known Metro Green was not in compliance with the Solid Waste Management Plan, the permits would not have been issued. This is the reason the Certificate of Occupancy was not issued. It was not approved.

3<sup>rd</sup> Witness/Philip Gruber was sworn in by Atty. Brian Easley. Mr. Gruber is a 3<sup>rd</sup> party inspector for final products and also a Certified Building Inspector. He was asked to come in and perform inspections on the final products of both buildings. He stated he did not find anything serious, noting there were no paper towels or hand dryer dispensers in the bathrooms which is a requirement. They immediately took action and got those items installed the same day. Mr. Gruber stated he did not participate in the Certificate of Occupancy application process and was only brought in as a third party to see if the buildings were in compliance with the building codes.

Closing arguments were give by both Atty. Easley and Atty. Jones

**VI. ANNOUNCEMENTS – None.**

**VII. REPORTS AND PRESENTATIONS – None.**

**VIII. OLD BUSINESS**

**a. Appeal Form**

**b. Discussion of Procedures Adopted at Prior Meeting**

**Motion** – made by Vice Chair Clara Delay to table this item until the next scheduled meeting. Seconded by Member Leroy Lark.

**Motion passed unanimously.**

**IX. NEW BUSINESS**

**a. Consideration of New Procedures for Adoption**

**Motion** – made by Vice Chair Clara Delay to table this item until the next scheduled meeting. Seconded by Member Leroy Lark.

**Motion passed unanimously.**

**b. Scheduling of next Board meeting**

**Motion** – made by Secretary Mike Burdett to hold next Construction Board of Appeals meeting on December 8, 2021 at 6:00pm. Motion seconded by Vice Chair Clara Delay.

**Motion passed unanimously.**

**X. COMMENTS BY BOARD MEMBERS – None**

**XI. PUBLIC COMMENTS**

Public Comments by:

Jennifer Wilson

Jacqueline Bryant

Tracy Hickman

April Lipscomb

Alexis Morris

Linda Lee

**Motion** – made by Vice Chair Clara Delay to move the public comment under the Public Hearing for the records. Seconded by Chair Kerry Williams.

**Motion passed unanimously.**

**Motion** – made by Vice Chair Clara Delay to add Public Comments to the Public Hearing for Metro Green. Seconded by Chair Kerry Williams.

**Motion passed unanimously.**

**XII. EXECUTIVE SESSION – N/A**

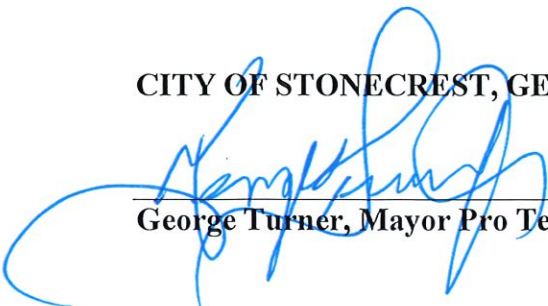
**XIII. ADJOURNMENT**

**Motion** – made by Vice Chair Clara Delay to adjourn the meeting. Seconded by Secretary Mike Burdette.

**Motion passed unanimously.**

As approved on the 12th day of July, 2022.

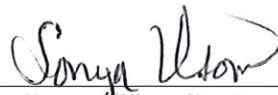
CITY OF STONECREST, GEORGIA



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George Turner, Mayor Pro Tem

ATTEST:



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Sonya Isom, City Clerk

Americans with Disabilities Act

*The City of Stonecrest does not discriminate on the basis of disability in its programs, services, activities and employment practices. If you need auxiliary aids and services for effective communication (such as a sign language interpreter, an assistive listening device or print material in digital format) or reasonable modification to programs, services or activities contact the ADA Coordinator, Sonya Isom, as soon as possible, preferably 2 days before the activity or event.*