

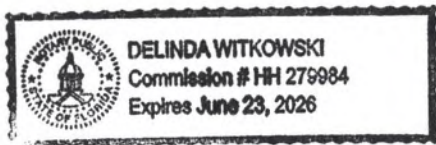
Special Magistrate
December 06, 2023

The document signed by the Special Magistrate, and the information provided herein is the minutes of our Special Magistrate on November 15, 2023. Minutes were formally approved and adopted by Kevin Wagner on December 06, 2023.

ATTEST:



Special Magistrate



ADVISORY BOARD LIAISON

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A Special Magistrate Hearing was held on **November 15, 2023**,
was called to order at 2:33pm, Adjourned 4:42pm

Present:

Kevin Wagner, Special Magistrate
Lawonda Warren, Assistant City Attorney
Marc Woods, Code Officer
Paul DeCarolis, IPP Administrator
Amy Alvarez, AICP
Hope Plevy, Counselor
Randell Sly, Director of construction and compliance permitting for the company
Kenneth Goldberg, Register Agent

City Attorney Lawonda Warren began by giving a little background on the cases starting with our first case which was 23-13355 which had to do with unlawful littering. Testimony was heard from both the city and the defendants and their counsel. It was found that the violation did occur, and reserved to issue, and it was said that any information that they had to present was to be done prior to the hearing, or at the hearing so that the magistrate could make a determination what fine was appropriate; which the city did not receive any additional information for this case. Our next case was 23-13368 which is the violation having to do with needing to pull permits on six different items (structures) that were found in violation. For the remaining three cases which are 23-13454, 23-13514 and 23-13515 there was no discussion, and were to be brought back to see if the respondent would provide any extra information. They did not have any information at our last hearing, and still did not provide any additional information on the cases. They have not come into compliance, and we are here to move forward with the cases. The city would like to know how the magistrate would like to move forward by starting with the last three, or if you would like to start from the top. Kevin Wagner mentioned that he was fine with whatever the city wanted, and Assistant City Attorney stated that we could start with the third case on the agenda.

23-13454

Owners Name: GCG Real Estate Holdings LLC
Register Agent: Kenneth Goldberg R/A
Property Address: SW 10th Street
PC # 12 43 46 20 01 021 0032
Presented by: Marc Woods

Marc Woods, Code Enforcement testified on behalf of Case 23-13454 which was located on SW 10th Street (PC # 12 43 46 20 01 021 0032) which is a vacant parcel. Kevin Wagner, the magistrate asked if there was anyone present to testify on this case.

Hope Plevy was present who is counsel for GCG Real Estate Holdings.

The property that is a vacant parcel adjacent to 1180 SW 10th Street which Code Officer Marc Woods observed with no address, along with no site plan modification submitted to the city for the business activities that were taking place on the property having to do with the violation 2.4.6 (B) (1 to 5) & 2.4.6 (A) (3). Marc Woods stated that business activities cannot take place on a vacant lot until the city has conducted a site plan and review the zoning of the property. Code Officer Marc Woods testify to the proper notification, and stating that he had four photographs to enter into evidence for this case. Assistant City Attorney Lawonda Warren went through all four photos and questioned the code officer on each photos, and asked that they be entered into evidence; Hope Plevy had no objections. Kevin Wagner had no objections to the photographs, and they were admitted into evidence. Lawonda Warren asked Marc Woods once he noticed that there was no site plan on this property, if he went to Planning and Zoning to inform whether or not a site plan modification had been done. The code officer stated that he did requested a review from the chief planner, and a written response was provided. Hope Plevy questioned Marc Woods on this case asking him a few questions concerning the property, and if he knew what the property is used for.

Lawonda Warren called Amy Alvarez to testify on behalf of the city as the Assistant Development Services Director. Ms. Warren questioned Ms. Alvarez if she is familiar to site plans and properties and whether they have proper site plans with the city. Lawonda asked Amy if she was aware of this property, and the fact that they did not have the proper site plans. Assistant Attorney Lawonda asked Amy Alvarez to give a little historical information on the property. Amy stated that on the approved property they have the building that is there, the parking area, and landscaping. However, the portion to the west is essentially supposed to be a vacant lot with no improvements on it, and just a fence around the perimeter. According to the cities files nothing has ever been approved for this vacant lot. Any improvements on that site requires a site plan, which basically means anything that is occurring on that property. Hope Plevy asked Amy a couple questions, and stated that they couldn't find a category to place them under. Amy confirmed that may very well be true, but that if it's not a manufacture use, it could be some other type of use that could be a different review process. Assistant City Attorney Lawonda questioned Amy in the end if anything is supposed to be on that property, and Amy said no except for the fence. Hope Plevy asked if there were any permits at all on that property, and Amy stated that there shouldn't be because they have no site plans that have been approved for the west side portion.

Randell Sly, Director of Construction & Construction Compliance Permitting for all county pave. Ms. Hope asked Mr. Randell if he was familiar with the west side that we have been talking about, and he confirmed that he did. Hope asked Randell if he knew if there were any site plans on this property. He stated that based on the original site plan was to place a fence around it, and the property appraisal identification is industrial use. Mr. Sly stated that they had us incorporate a fence around both properties, and it kinda contains it as one property. We felt that it allowed us the ability to use it as part of our business. Randell Sly did bring to the hearing some documents having to do with old permits. Kevin Wagner asked them if they had provided the documents ahead of time to facilitate things. Hope stated that they had been having meetings with the city, and Amy Alvarez clarified that they just had one meeting. Hope stated that they hired an engineer to deal with everything. Hope mentioned that she wanted the documents

brought by them to be entered into evidence; Lawonda had no objections nor did Kevin Wagner. Assistant Attorney Lawonda did have some cross examination questions concerning the permit application and permit verification stating that those were for the east side of the property. Lawonda clarified that there are two distinct numbers for the two different properties with two PC numbers. Randell Shy stated that they have one site plan that shows both lots combined. To be clear Lawonda stated that the documents provided by GCG Real Estate Holdings LLC were on the east side property, lot 40. Marc Woods confirmed the property appraiser number for the west side of the property which is #12434620010210032 and the east side #12434620010210040. There was a cold case mentioned, and it was asked not to be considered on our current case. After some back and forth, Kevin Wagner asked why they just don't do a site plan modification and they stated that they are which they say could take up to six months. Magistrate Kevin Wagner asked if presumably if he rules in the cities favor that a site plan is needed how much time is reasonable to get this accomplished. Amy Alvarez mentioned that it depends if they need a conditional use site plan or not. You submit it to us and give us a certain amount of time to review it. Then it is in their court to provide back for comments. Amy Alvarez stated that six (6) months could be reasonable, assuming they have a good initial submittal from the professionals that they hire.

Special Magistrate Kevin Wagner suggested the following: Lets create a six month time frame. In three (3) months we will do a status hearing to see whether they are proceeding appropriately, if not, we will revisit it. The assistant city attorney asked that we have a finding of violation even if you are going to give them an extension of time. Kevin responded that it's not an extension, but just reasonable time to comply. Lawonda asked Kevin if he is not assessing any daily fines, and he stated that he will, but that he needed to still come up with a reasonable amount. Kevin Wagner stated that he does believe that there is a violation here, and that a site plan is necessary especially with the amount of activity that is going on. The magistrate is giving him 6 months to bring this case into compliance, with a status check hearing in three months to make sure that I see progression occurring and after that I will assess a fine.

Magistrate Kevin on case MN 23-13454 made a finding of fact and law, and that my notice is sufficient. I find the property in violation of listed code sections, specifically for the lack of a site plan and conditional use. I give the respondent six (6) months for May 15, 2024 or a fine of Five Hundred Dollars (\$500,00) per day may accrue, setting a status hearing for three (3) months in February giving the city the liberty to set the day that works for both parties.

23-13514

Owners Name: GCG Real Estate Holdings LLC
Register Agent: Kenneth Goldberg R/A
Property Address: 1180 SW 10th Street
Presented by: Marc Woods

Marc Woods, Code Enforcement testified on behalf of Case 23-13514 which was located on 1180 SW 10th Street SW 10th Street where he observed numerous site modifications where no building permits were present. This is a violation of 2.4.6 (B) (1 to 5). Code Officer Woods

introduced five (5) photographs into evidence. City Assistant Attorney Lawonda Warren questioned Marc Woods on the different photos. There were no objections to introducing the photos into evidence.

Hope Plevy questioned Officer Marc Woods concerning his photos.

Amy Alvarez was present to testify on behalf of the case. Attorney Lawonda asked Amy if there was a site plan for that attached trailer. Amy stated that from what she could tell there was not, but wanted to elaborate on it. Basically, before getting any permits, a site plan modification is necessary. Building permits also need to be approved after any site plan modification.

Hope Plevy questioned Amy Alvarez whether she knew what the code was for the trailer. Amy stated she is not familiar with that specific structure, but if you are expanding any of your use area, or any modification on your site that would include a site modification.

On September 14, 2023 was for placement of nine storage structures which is sited for the 1180 SW 10th Street which have not been approved.

Randell Sly did state when asked by Lawonda Warren that he was aware that the permits were disapproved, but they have an engineering working on it. Kevin Wagner asked the city what their recommendation was for this case. The city recommends sixty day (60) or \$150.00 per day.

This case needs both a site plan and approved permits. Mr. Wagner stated that they probably should not have put that structure there without having to explore what the requirements were.

Randell Sly mentioned that they lease certain portions of the yard storage to another company, which are also business partners.

Kenneth Goldberg was present also to speak on behalf of the case. As far as the structure that is being rented out makes it hard to displace people so close to the holidays. If within the six month time frame the permit is not approved, we will have to remove it.

Magistrate Kevin Wagner made the decision to adopt the previous order on the same time frame. The magistrate is giving him 6 months to bring this case into compliance, with a status check hearing in three months to make sure that I see progression occurring with a Five Hundred (\$500.00) daily fine if compliance has not been met.

23-13515

Owners Name: GCG Real Estate Holdings LLC

Register Agent: Kenneth Goldberg R/A

Property Address: 1180 SW 10th Street

Presented by: Marc Woods

Marc Woods, Code Enforcement testified on behalf of Case 23-13515 which is in violation 7.8.3 (Maintenance of Building) at 1180 SW 10th Street where he observed fuel tanks that were not protected by bollards. Marc Woods asked for a temporary protection solution. Code Officer

Woods introduced four (4) exhibits into evidence. City Assistant Attorney Lawonda Warren questioned Marc Woods on the different photos. There were no objections to introducing the photos into evidence for the first four photos introduced by the code officer. Lawonda questioned whether all the notices were done appropriately, which they were all sent by certified mail and first class on September 6, 2023. The attorney asked Marc why this case was more concerning than the rest, and he stated that it had to do with safety. Meeting the codes assures that they are keeping up with safety requirements.

Kevin stated that there can't be an approved permit on the vacant lot because it doesn't have a site plan.

There had been a few previous bollards that were approved according to Randell Sly by the building department, also the fire department engineer. The magistrate stated asking what the cities concerns, and why they feel they are still out of compliance here.

A five minute break was taken.

Hope Plevy questioned Randell Sly on a few exhibits. He stated that they were approved bollard permit on the nine different bollards, and nine different sign offs and there site plan locations. Mr. Wagner asked Mr. Sly if it was his testimony that all fuel tanks of any kind are appropriately protected and behind bollards. Randell Sly stated that his testimony is that for the moment it is related only to the propane that was brought to his attention during his walk through with Marc Woods. However, he stated that he can offer some testimony on the bollards at the fuel center that are yet to be approved through a plan amendment. Kevin asked that what he referred to was the fuel tanks that are on the nonbuilding side, and Mr. Sly agreed.

Hope Plevy went through the exhibits with Mr. Randell Sly.

Al Angulo, lead Code Enforcement Officer was sworn in at this time and also questioned about the photos that he had taken on that day shortly for our Special Magistrate Hearing. Al Angulo had been assisting Marc Woods throughout some of the visits to this property. Al Angulo was given access to the property by a foreman that worked on the property. Hope Plevy asked what the foreman name was because he was should not have given access to the property. Kevin Wagner allowed the photos into evidence; exhibits 1-5.

Magistrate Kevin Wagner asked what remedy is the city seeking, and attorney Lawonda asked code officer Marc Woods to comment on that question. The city is asking for compliance within thirty (30) days, or Two Hundred Fifty Dollars (\$250.00) thereafter if compliance is not met. The only thing on the property that is out of compliance is the fuel center for this case. Compliance for this case would be adequate protection for the fuel tanks. Attorney Lawonda also stated that proper maintenance along with proper approval to even be on this property which would need a site plan modification.

Magistrate Kevin commented that safety issues are a concern and he felt that a six month period would be to long for this case. His inclination is not to do the same order here, because I do not want to read later here that something happened. What can we do here to make this site safer. Attorney Lawonda stated that maybe we could have something installed within seven days to block so that there is not so much a safety concern. Lawonda is not saying that they are even

allowed to be there, because what I don't want to do is say it is permitted and they are allowed to be there by doing this order.

Magistrate Kevin made it clear that no order that he makes here changes the requirements for the site plan and permitting with the city. But he is concerned that whatever is operating on the property is done in a safe manner. Kevin stated that he understands the cities frustration here, because this would not be an issue here if things had been permitted appropriately from the very beginning. Permitting through the city makes us create safe zones for how these things are done.

Magistrate Kevin Wagner gave the respondents fourteen days to come up in conjunction with the city a temporary solution to this issue. He did not want to debate what would be done or how. Kevin Wagner ended up giving ten (10) days for them to get with Marc Woods and come up with a solution that will be good for both sides. If that cannot be worked out we will have to have an emergency hearing which I will possibly tell you to move those things. Kevin stated that he is forgiving about a lot of things, but safety issues I am not. I do not want to read in the paper later on that something happened that I had jurisdiction over.

Ten (10) days is being given, and six (6) months which is the same order as the previous orders to get these things permitted on the site plan. Get the site plan fixed, and the permitting done. At the end of that time you have not accomplished that I am simply going to find this property in violation. The temporary solution is just that; a temporary solution for safety only. It does not stop you from resolving these issues and being permitted according to city code. I am just giving you appropriate time to get your site modification and permitting done.

Magistrate Kevin Wagner made a violation does exist on this property, and gave the respondent ten (10) days to work out with the city a temporary safely solution. I am also giving you six (6) months as part of the larger site plan permitting to get that done. We will also do a three (3) month status check to make sure that any safety solution that was put in place is working out, and that you are appropriately working with the city to get the site modification and permitting done. If these deadlines are not being met I will assess a fine of five hundred dollars (\$500.00) a day until the property comes into compliance.

23-13355

Owners Name: GCG Real Estate Holdings LLC

Register Agent: Kenneth Goldberg R/A

Property Address: SW 10th Street

PC # 12 43 46 20 01 021 0032

Presented by: Marc Woods

City Attorney Lawonda Warren began by giving a brief description on the case and saying it was the cement dust coming from the cement dispenser. She stated that there was an environmental concern, and also about the different petroleum materials. Paul DeCarolis, IPP Administrator, a city employee was present to give a brief description since it had already been presented. Basically Paul DeCarolis stated that the filtration system failed and ended up on the cars and

parking lots. Kevin Wagner adopted the previous testimony in this case. Paul asked if they brought their safety data sheet with the motion product that they use. They did bring documents, but attorney Lawonda asked if they have a resumed page since the paper work was so thick.

Magistrate Kevin wanted to know what the long term damage could end up being. Paul DeCarolis stated that it is hard to really know what the damage could be in long terms. Mr. DeCarolis read and stated on the ordinances.

Magistrate Kevin Wagner asked what the city is seeking. Code Officer Woods stated that the city is asking for the max of fifteen thousand dollars (\$15,000.00) because of the magnitude of the situation and being an irreversible case.

Hope Plevy stated that it was only a one day incident, and that a report had been done that the fuel spillage is not harmful. Documents were brought in but extensive. They were provided to the magistrate to look over.

Kevin Wagner stated after much discussion that in the end there was a discharge on the property which had already been discussed previously. Because of the extent of the documents, he decided he needed additional time to read everything given to him, and will issue the appropriate fine should be in this case.

23-13368

Owners Name: GCG Real Estate Holdings LLC
Register Agent: Kenneth Goldberg R/A
Property Address: SW 10th Street
PC # 12 43 46 20 01 021 0032
Presented by: Marc Woods

Attorney Lawonda stated that this case has already been found in violation on six different statutes on the property that need to be permitted. Code officer Marc Woods stated that they could be combined with the other cases and their findings. Kevin Wagner asked the defendants if that was okay on their behalf, and Hope Plevy said that was fine.

Magistrate Kevin Wagner adapted the previous findings to this case as well which is six (6) months with a three (3) month status check. Kevin stated that if anyone has any more documents to submit them to him within twenty-four (24) hours. Lawonda requested that other documents not be submitted. Lawonda suggested that anything that they have now that it be submitted. Magistrate Kevin Wagner will give a finding within a one-week period once he had the appropriate time to look over the given documents.

Meeting adjourned at 4:42pm