MICHELLE R. MILLER, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 5361589 OR BOOK 5177 PAGE 1440, Recorded 07/12/2024 02:38:43 PM

CITY OF PORT ST. LUCIE
NEIGHBORHOOD SERVICES DEPARTMENT
CODE COMPLIANCE DIVISION
121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984

ORDER DENYING MOTION TO STAY ENFORCEMENT OF ORDER; and
ORDER DENYING MOTION FOR CONTINUANCE; and
ORDER CERTIFYING AND IMPOSING FINE

CITY OF PORT ST. LUCIE,
A Florida Municipal Corporation
Petitioner,

Case No. CE-23-01973 SM

v.

RED APPLE ST. LUCIE, LLC,
Respondent.
...../

Property Address:	300 NW CASHMERE BLVD., PORT ST. LUCIE, FL 34986
Legal Description:	LOWES OF ST. LUCIE WEST (PB 55-36) PARCEL 5 (6.15 AC) (OR 3048-1591)
Parcel Control No:	3430-601-0006-000-7
Re: Code Sections:	158.237(C)(8) Site Plan Approval Process- Violation of Site Plan.

The Special Magistrate appointed by the City Council to hear code enforcement cases for the City of Port St. Lucie, in accordance with Chapter 162, *Florida Statutes*, has heard testimony at the Code Enforcement Certification of Fine Hearing held on July 3, 2024, and based on the arguments, evidence and testimony presented, the following FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDERS are hereby entered.

FINDINGS OF FACT

1. The Respondent is the owner of the above-referenced property.
2. The Respondent was present at the hearing through Principal Melany Kerrigan. The Respondent was also represented by legal counsel Lisa D. MacClugage, Esq.
3. The City was present at the hearing through Code Compliance Officer Rachel Knaggs. The City was also represented by Alyssa Lunin, Esq., Assistant City Attorney, and Camille Wallace, Esq., Deputy Director of Neighborhood Services.
4. The City provided the Respondent with proper notice of the Certification of Fine hearing through certified mail and posting the Notice of Hearing at the Property and City Hall.

State of Florida
City of Port St. Lucie

I hereby certify that this is a true and correct copy of the original.

Name: John Zabala
Title: Accounting Clerk - Lien Specialist
Date: 7/12/24

5. The Respondent has been provided with an opportunity to question the City's witnesses and to otherwise be heard at the hearing.
6. On January 17, 2024, the Respondent was found in violation of City Code Sec.158.237(C)(8) Site Plan Approval Process - Violation of Site Plan. The Respondent was ordered to clear its on-site stacking lanes as depicted in the approved site plan and to ***either*** reduce enrollment to a maximum of 1,290 students with a corresponding maximum staffing of 102 ***or*** apply for modification of its special exception use permit.[1]
7. On February 13, 2024, the Respondent filed a notice of appeal in the Nineteenth Judicial Circuit, appealing the Order Finding Violation. Respondent's initial brief and the record on appeal were originally to be filed no later than April 15, 2024. Respondent has been granted two motions for extensions of time to file its initial brief and the record on appeal. Respondent's initial brief and the record on appeal are currently due to be filed no later than August 14, 2024.
8. On June 27, 2024, the Respondent filed a Motion to Stay Enforcement of Order and Accrual of Fines Pending Appeal and Motion to Continue Certification of Fine Hearing (Motion to Stay and Continue) on July 3, 2024.
9. On June 27, 2024, the City filed an Objection to the Motion to Stay and Continue. The City's Motion notes its objection to Respondent's request for a stay pending appeal and continuance of the Certification of Fine Hearing, but also requests that the parties be given an opportunity to present arguments on the Motion to Stay and Motion to Continue and the Objections thereto at the July 3, 2024 Certification of Fine Hearing.
10. At the July 3, 2024 hearing, the Parties presented their arguments in support of their respective positions on the Motion to Stay and Motion to Continue and the Objections thereto.
11. The Respondent's Motion to Stay Enforcement of Order and Accrual of Fines Pending Appeal and Motion to Continue Certification of Fine Hearing on July 3, 2024, were denied.[2] Thereafter, the Special Magistrate proceeded with the Certification of Fine Hearing.
12. Code Compliance Officer Knaggs conducted follow-up site inspections on: 1/29/24;

---

[1] In the Order Finding Violation, this Special Magistrate specifically ordered:

a. "The Respondent shall clear all four of its on-site stacking lanes as depicted in the approved site plan for all student drop off and pick up times. Compliance with this requirement shall occur no later than 10 days from the date this Order is rendered."
b. "The Respondent shall either reduce its enrollment to a maximum of 1,290 students, with a corresponding maximum staffing of 102; OR submit a complete application for modifications to its previously approved special exception and site plan approvals that, upon approval, will allow the accommodation of increased student enrollment and staffing, as well as any parking, traffic, and stacking issues that may result from the increase in student enrollment. Compliance with this requirement shall occur no later than 60 days from the date this Order is rendered. Submittal of said application(s) shall place the code enforcement case in abeyance pending the final outcome of the application process. If the application(s) are denied, the Respondent shall reduce its enrollment to the approved enrollment limit (along with accompanying approved staffing limits) for the start of the 2024-2025 school year."
c. "If the Respondent fails to comply with any compliance deadline in this Order, daily fines of up to $250.00 per day may be assessed until compliance is achieved."
d. "If necessary, the City shall notice this matter for a Fine Certification hearing at which time fines may ultimately be imposed."
e. "Upon complying, it is the responsibility of the Respondent to notify the City of Port St. Lucie Code Compliance office at (772) 380-7101 to request a re-inspection of the property."

[2] *See* the Conclusions of Law and the Order portions of this Order hereinbelow.

4/18/24; 5/7/24; 5/23/24; and 5/28/24. At each of those inspections, Officer Knaggs found the Respondent in partial compliance with the Order Finding Violation since the Respondent had removed parked cars and the parked school bus from the on-site stacking lanes as required by the Order Finding Violation.

13. In conjunction with the follow-up site inspections, Code Compliance Officer Knaggs confirmed with the City's Planning and Zoning Department that the Respondent had not applied for a modification of its special exception use permit, or advised the City that it has adjusted its student enrollment to a maximum of 1290 students.[3]

CONCLUSIONS OF LAW

1. Florida Rule of Appellate Procedure 9.190(c), which references Florida Rule of Appellate Procedure 9.310, titled "Stay Pending Review" authorizes and requires a party seeking to stay a final or nonfinal order pending review first must file a motion in the lower tribunal "which has continuing jurisdiction, in its discretion, to grant, modify, or deny such relief." This tribunal has continuing jurisdiction and discretion to grant, modify or deny the Motion for Stay and Motion to Continue in this matter.

2. The Respondent has NOT established sufficient grounds to grant a Stay of the Order Finding Violation pending appeal. Courts generally consider four factors when reviewing and considering a motion to stay an order pending appeal: (a) the likelihood of success on appeal; (b) the threat of irreparable harm absent a stay; (c) the potential harm to other interested parties; and (d) the public interest. The Special Magistrate has considered each of these factors and concludes as follows:

   (a) **Likelihood of Success on Appeal**. In its Motion, Respondent raised five arguments to support its assertion that it has a strong likelihood of success on appeal. However, none of Respondent's arguments are persuasive. First, Respondent argues the 2011 stacking ordinances cannot be retroactively applied to its 2008 site plan approval. However, Respondent's argument misstates this tribunal's orders as to application of these stacking ordinances. In the Order finding Violation, the Respondent was found to not be in violation of City Code Sec. 158.221(I)(5) and City Code Sec. 158.221(I)(7) Stacking Requirements, since those codes were adopted in 2011, several years after the Respondent received its development approvals from the City in 2008, and those codes are not applied retroactively. Since no appellate remedy is needed by the Respondent on this point, it cannot succeed on appeal. The Respondent also argues[4] that the City's stacking ordinances cannot be applied to their site because they are preempted by the Florida Uniform Traffic Control Law. Again; however, the Respondent was found to not be in violation of City Code Sec. 158.221(I)(5) and City Code Sec. 158.221(I)(7) Stacking Requirements. Since no appellate remedy is needed by the Respondent on this point, it cannot succeed on appeal. Second, the

[3] During the hearing, evidence was placed into the record by the Respondent that during Summer School, which has concluded just the week prior o the hearing, student enrollment was an actual number of approximately 95 students; however, this is not ovidence of an adjustment of the maximum enrollment to 1290. Moreover, the Motion to Stay and Motion to Continue reference, at Paragraph 7(a), a maximum student enrollment of more than 1,400 students.

[4] In the Motion to Stay and Motion to Continue, this is actually the fourth point made by the Respondent on the argument regarding the likelihood of success on appeal.

Respondent argues that "[t]he 1,290-student figure in the site plan was a non-binding projection, not an enrollment cap" and as a result, it cannot be found to be in violation of its development approvals for exceeding that enrollment number and enrolling in excess of 1,400 students. The Special Magistrate disagrees with this argument. As previously found, the Respondent set the student enrollment of 1,290 in its site plan application, including its operational plan and its traffic study report. Moreover, the Respondent[5] testified under oath at both 2008 Planning and Zoning Board quasi-judicial hearings that its expected maximum enrollment would not exceed 1,290 students. There is no reasonable reading of the sworn testimony to the Planning & Zoning Board, or the documents submitted to the Planning & Zoning Board, that would leave one to believe the 1,290 assertion by the Respondent was nothing more than a non-binding projection. Everything that was submitted, including the sworn testimony, the school's operation plan, and the traffic study report indicated that 1,290 was the maximum student enrollment which would be reached after five years of ramp-up. The Respondent's next argument regarding success on appeal is that state law preempts the City from capping enrollment below that allowed by the Florida Building Code, which in this case is approximately 1,500. The Special Magistrate disagrees that this argument evidences a likelihood of success on appeal. It is true that Sec. §1002.33 (18)(a) *Florida Statutes* (2023) prevents a local government from imposing artificial enrollment caps below that allowed by the Florida Building Code, [6] however; that is not what occurred here. Rather, what occurred here was that the City was presented with sworn testimony and supporting documentary evidence at quasi-judicial hearings, that the charter school would contain a maximum student enrollment of 1,290 after full ramp-up, and that the operations manual and the traffic study report relied on the 1,290 number. In response, the City granted the development applications for a charter school with a maximum capacity of 1,290 students, AS REQUESTED AND AS APPLIED FOR. Had the Respondent wanted to plan for a maximum student enrollment of 1,500 students, it could have presented evidence and testimony at the quasi-judicial hearings to that effect. It did not. Finally, the Respondent asserts that the City's actions violated its due process rights and constitute unlawful disparate treatment of charter schools as compared to traditional public schools. Again, the Special Magistrate disagrees that this argument evidences a likelihood of success on appeal. As previously found on the issue of alleged disparate treatment by the City, Respondent attempts to compare its charter school to two traditional schools with are not even located within the City of Port St. Lucie and which therefore are not subject to the City's regulatory processes or substantive codes. As such, this attempt at a comparison and an argument that supports disparate treatment by the city against charter schools compared to traditional public schools neither comports with the requirements of the statute, nor is even reasonable to consider.

---

[5] Actually, the Respondent's predecessor in interest who applied for, received, and later sold the site, including the development orders, to the Respondent.

[6] The relevant part of F.S. §1002.33 (18)(a) reads: "...The local governing authority shall not adopt or impose any local building requirements or site-development restrictions, such as parking and site-size criteria, student enrollment, and occupant load, that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code..."

(b) Irreparable Harm Absent a Stay

The Respondent raises three arguments under this factor. First, the Respondent argues that the absence of a stay would cause disruption to "over 1400 students and their families if enrollment must be reduced shortly before the start of a new school year." The hearing on the Respondent's code compliance violation was in September 2023 and the resulting order was published in January of this year, which gave the Respondent between January and the start of the 2024-2025 school year to comply with this tribunal's Order Finding Violation without causing disruption to students. Respondent was ordered to file its initial brief and record on appeal on April 15, 2024, but chose to file *two* extensions of time thereafter. Respondent has allowed a considerable amount of time to lapse. In short, the Respondent is a victim of its own time management and has not demonstrated irreparable harm absent a Stay.

As to Respondent's argument that the absence of a stay would cause financial hardship with the cost of fines and costs to alter traffic patterns, the Order Finding Violation simply required compliance with the site plan, which has been in existence for many years.

As to the Respondent's argument that denial of a stay would cause damage to its reputation, it is the opinion of the Special magistrate that neither he, nor the City, is the keeper of the Respondent's reputation, and that this is not a valid reason to grant a stay.

Finally, Respondent argues that due process requires the tolling of fines so that it may exhaust its administrative remedies and obtain judicial review. No authority has been presented to support this argument and the Special Magistrate rejects it.

3. For the same reasons the tribunal articulated in denying the Respondent's request for a stay, it also denies the Respondent's Motion to Continue the Certification of Fine Hearing.

4. The Respondent is NOT in compliance with the Order Finding Violation. The Order Finding Violation in this case required the Respondent to comply with two conditions, as noted in footnote 1. Based on the testimony and evidence presented, and after considering pertinent factors, including those set forth in Florida Statute Section 162.09(2)(b), this tribunal finds that Respondent has complied with the first requirement, that of clearing the on-site stacking lanes. However, the Respondent failed to comply with the second requirement, and the property remains in violation of City Code Section 158.237(C)(8), in that the Respondent has neither reduced its maximum student enrollment to 1,290, nor applied for a site plan modification to accommodate up to 1,500 students.

ORDER IMPOSING FINE

1. The Respondent is hereby ordered to pay a fine in the amount of $200 per day up to a maximum of $20,000, representing each day the violation continued past the ***Compliance Date of 3/17/2024***.
2. The Respondent is hereby ordered to pay administrative costs in the amount of $411,

which said charges represent reasonable costs incurred by the City during its prosecution of this case.

3. A certified copy of this Order may be recorded in the public records and shall thereafter constitute a lien against the Property and all other real and personal property owned by the Respondent(s), pursuant to s. 162.09(3), F.S. until fully paid and the violations corrected.
4. If the lien remains unpaid, Respondent(s) may be responsible for the costs incurred by the City of Port St. Lucie on the collection of this debt.
5. After three (3) months from the filing of any such lien which remains unpaid, the Special Magistrate authorizes the City Attorney of Port St. Lucie to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. Such lien shall accrue interest at the rate determined by the Chief Financial Officer of the State of Florida pursuant to s. 55.03, F.S.

This Order may be appealed within 30 days of execution, as set forth in s. 162.11, F.S.

Done and Ordered

Dated this 11th day of July, 2024

Special Magistrate