

Special Master Meeting Minutes January 15, 2021

PRESENT:

**Special Master, Mr. Bush
City Administrator, Mr. Gisbert
Code Enforcement, Ms. Lyons
City Attorney, Mr. Beninate (Via Phone)**

Alleged Violator, Mr. Howard McClain

NOT PRESENT

Alleged Violator, Nancy & Gary Cech

Special Master, Mr. Jim Bush called the hearing to order at 1:00 pm

Mr. Bush opened by saying the hearing procedures were laid out in the Notice of the Hearing and asked if anyone had any questions. Mr. McClain addressed the special master and said as I understand it you will not follow the rules of evidence, is that correct? Mr. Bush answered by saying if the preponderance of likelihood that evidence is reliable, then he would accept the evidence. Mr. McClain asked do you accept hearsay evidence? Mr. Bush replied by saying if he finds it reliable, he will accept hearsay evidence.

Case No. 1 – The City of Mexico Beach V. Mr. Howard McClain – In regard to Property 110 N. 36th St.

Ms. Lyons from Code Enforcement gave an opening statement by saying this hearing was in regard to Mr. McClain’s house being moved due to the impact of Hurricane Michael. The house moved off its foundation from Mr. McClain’s lot at 110 N. 36th St (Parcel # 04790-000-000) to a neighboring lot on N 36th St. owned by Mr. Beyers. (Parcel # 04790-010-000). The hearing was to decide who was responsible for the house.

Mr. Howard McClain addressed the Special Master by saying he does not have anything contradictory to say from what Ms. Lyons addressed other than he is not the sole owner of the property he is co-owner with his brother Charles McClain and Nephew Terry McClain. None of the notices that were sent out included the other property owners’ names. He stated he was not raising that as a due process objection he is simply pointing that out for the benefit of the Special Master. Mr. McClain went on to say as far as the facts that Ms. Lyons laid out the house was located on his property then Hurricane Michael came in with 19 ft. of storm surge and appx 140 MPH winds and relocated the house from his property onto the adjoining property and they as homeowners had nothing to do with that, it was done entirely by the Hurricane.

Special Master, Mr. Bush said the City may present its case.

Mr. McClain addressed the Special Master and said they (property owners) would be willing to stipulate to those facts without the necessity of going through testimony, if that would be appropriate.

Mr. Bush said he really needs to see evidence as he was not familiar with the case.

Once again, Special Master, Mr. Bush said the City may present its case.

Ms. Lyons presented evidence from the Bay County Property Appraisers website that lists the owner as MC CLAIN, HOWARD E ETAL, with his address and therefore this was where the notice of violation was mailed to.

Mr. Bush stated it was not the City's responsibility to find ETAL (others) that would be up to the addressee.

Ms. Lyons continued with testimony stating that Mr. McClain verbally said it was not his responsibility it was God's responsibility. Ms. Lyons presented her evidence to include Notices and a letter from 2019 showing that the property in question was not eligible for removal through the FEMA Process.

Mr. Beninate, City Attorney, added that the City would like to include the entire Code Enforcement File into evidence for the record.

Mr. Beninate made an additional comment, he said the primary issue on this case is who is responsible for the removal of the property and addressed Section 7.10.04 of the code enforcement procedure in the Land Development Code. (Section attached). Mr. Beninate also stated that the City's position is Mr. McClain is continuing to let this violation continue.

Mr. Bush closed the case for the City.

Mr. McClain presented his case.

By way of testimony, he wanted to emphasize the house was located on his property and Hurricane Michael moved the house and they (Owners) had nothing to do with moving the house. He said he will make a legal argument. That is the only thing he wants to add to his opening statement.

Ms. Lyons made a closing argument by stating that the City needs the property removed for safety and health hazard reasons.

Mr. McClain made a closing argument by saying he did not say that the house was Gods responsibility he said that the house was moved by an Act of God.

The building is located at another address. The structure is not on his property so therefore he is not responsible for the structure.

By way of testimony, he wanted to emphasize the house was located on his property and Hurricane Michael moved the house and they (Owners) had nothing to do with moving the house. He said he will make a legal argument.

Mr. McClain's argument is the house moving off its foundation is indeed an act of God or Force Majeure. He is here today to say that the Act of God or Force Majeure could not have been prevented.

Mr. McClain said they (owners) respectfully request that the Special Master overturn the findings of the Code Enforcement Officer.

Mr. Bush deliberated by saying he has a problem based on the notice of violation he sees no violation that occurred at 110 N. 36th St (Parcel # 04790-000-000) based on the photographs the violation is on the neighboring property (Parcel # 04790-010-000.)

Based on force of nature. Under Florida Law there is no negligence on the part of Mr. McClain, ETAL

Based on the allegation, as it is written, Mr. Bush overturned Code Enforcements violation.

In closing, Mr. Bush said the City has an opportunity to appeal this decision to the circuit court in Panama City if they do not agree with the Special Masters Decision.

Case No. 2 – The City of Mexico Beach V. Gary & Nancy Cech – 515 Maryland Boulevard

Mr. Bush, Special Master stated - By code failure to appear is admission of guilt.

Ms. Lyons presented.

The home at 515 Maryland Boulevard is a health and safety hazard. It needs to be demoed. No response from owner/s Gary or Nancy Cech. Notice of Violations were returned unclaimed.

Mr. Bush – Based on preponderance of evidence he finds the owners are responsible for the violation and are hereby ordered that they have 30 days to bring the property into compliance. Civil Penalty in the amount of \$500 and administrative costs of \$50 are imposed on the property owner/s. If the property is not brought into compliance the City will take appropriate action and apply \$25 per day past the 30 days.

Case No. 3 – The City of Mexico Beach V. Gary & Nancy Cech – 203 Louisiana Boulevard

Ms. Lyons presented.


203 Louisiana Drive – Property is a health and safety hazard. It needs to be demoed. No response from Gary or Nancy Cech. Notice of Violations were returned as unclaimed.


Mr. Bush – Based on preponderance of evidence he finds the owners are responsible for the violation and are hereby ordered that they have 30 days to bring the property into compliance. Civil Penalty in the amount of \$500 and administrative costs of \$50 are imposed on the property

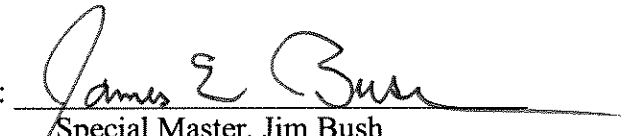
owner/s. If the property is not brought into compliance the City will take appropriate action and apply \$25 per day past the 30 days.

A member of the public (No Name Given) asked who was responsible for clean up in the first case and wouldn't it behoove the City to change the address and rehear this case again. Mr. Bush said he can't answer that question, but he was sure the City would address it.

Hearing adjourned at 1:49 pm

Attest: 
City Clerk, Lindsay Hovind

By: 
Code Enforcement, Kathy Lyons

By: 
Special Master, Jim Bush