



**Florence City Council
Business Meeting
Tuesday, August 25, 2020
6:00 p.m.**

MINUTES

The City Council of the City of Florence, Kentucky, met in regular session on Tuesday, August 25, 2020, at 6:00 p.m. at the Florence Government Center, 8100 Ewing Boulevard, Florence, Kentucky, with Mayor Diane E. Whalen presiding as chair.

CALL TO ORDER & WELCOME:

Mayor Diane E. Whalen called the regular meeting to order and declared the regular session open for the presentation of all city business.

ROLL CALL:

The roll was called, and the following five (5) members of council were present: Dr. Julie Aubuchon (Vice-Mayor), Mel Carroll, J. Kelly Huff, David Osborne, and Gary Winn.

Councilmember Duane Froelicher was absent.

Staff members present were: City Coordinator, Joshua R. Wice; Assistant City Attorney, Thomas Nienaber; Chief of Police, Tom Grau; Fire/EMS Chief, Scott Knoll; Business & Community Development Director, Joshua Hunt; Public Services Director, Eric Hall; City Clerk, Melissa Kramer; Community Services Superintendent, Jeremy Kleier; Code Enforcement Officer, Mike Macaluso; Assistant City Clerk, Brandi Roundtree; Videographers, Spencer Foreman and Jay Gordon; Police Officer, Jeff Mallery; and Police Officer, Joshua Koors.

The following were also present: Firefighter/Paramedic, Joe Mioni; Fire/EMS Assistant Chief, John Black; McBride Dale Clarion Representative, Rob Sweet; Resident of 10 Valley Drive, Steve Foltz; Resident of 4 Valley Drive, Steve McDaniel; and Residents of 6 Valley Drive, Rick and Myrna Sherman.

APPROVAL OF MINUTES:

Mayor Whalen called for a motion to approve the minutes of the August 11, 2020, business meeting. Councilmember Winn motioned to approve the minutes with a second from Councilmember Huff. **All councilmembers present voted aye.**

OATH OF OFFICE:

Scott Knoll, Fire/EMS Chief, introduced the newest member of the Florence Fire/EMS Department, Joe Mioni. Joe is the third of the newest firefighter/paramedics recently hired. Joe

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comes to us after working for the Montgomery County/Mount Sterling Fire Department where he served as a Firefighter/Paramedic. Prior to that, he was a Paramedic with the City of St. Louis Fire Department. Joe attended the St. Louis Community College where he obtained his Paramedic certification in 2018. Chief Knoll stated Joe did an outstanding job in our hiring process and is currently finishing up his recruit orientation.

Mayor Whalen administered the oath of office and welcomed Joe to the City of Florence Fire/EMS Department.

FORECLOSURE HEARING & CONSIDERATION OF RESOLUTION NO. 001-2020 FROM THE FLORENCE CODE ENFORCEMENT BOARD:

Mayor Whalen called upon Assistant City Attorney, Thomas Nienaber, for presentation of the hearing.

Mr. Thomas Nienaber introduced himself to the audience and council. Mr. Nienaber was filling in for City Attorney, Hugh Skees. Mr. Nienaber informed council the purpose of the hearing is to establish a record and act upon a recommendation for civil action initiated against Steven C. Foltz, 10 Valley Drive, Florence, Kentucky for code enforcement violations pursuant to City of Florence Ordinance O-10-16, City of Florence Ordinance O-33-05, and pursuant to KRS 65.8801 through 65.8839.

Historically, the case began in September of 2011. At that time, the first citation was issued against 10 Valley Drive, Florence, Kentucky. During the period of September 2011 through June 2017, approximately 50 citations were issued, resulting in the filing of 32 liens. The property condition is in bad shape. In June of 2017, the city council originally heard the case. Prior to civil litigation being initiated, an agreement was reached between Mr. Foltz and the city. The Settlement Agreement had three key elements. The agreement provided for a reduction of the outstanding liens, fines, and expenses in the amount of \$120,000.00 to be reduced to \$7,992.75 on the condition that Mr. Foltz paid \$300.00 a month, until that amount was liquidated. That was accomplished. The agreement also stipulated that Mr. Foltz would have to comply with all code enforcement regulations thereafter. This did not happen. From November 2017 through January of 2020, there were a total of 6 citations issued and 4 liens filed. Another key element of the agreement was if Mr. Foltz defaulted in that agreement, all of the liens would come into play again and the amount would be due and owing again.

Mr. Nienaber stated this brings us to November 20, 2017. After that time, 6 more citations were issued for the same violations which was the focus of the previous citations including unlicensed vehicles, house in disrepair, weeds, trash, gutters, etc. All of those violations were issued beginning in April of 2019, with the last January 23, 2020. Those violations still exist today.

The foreclosure recommendation was originally scheduled for the Code Enforcement Board in March and delayed due to the coronavirus pandemic. On June 17, 2020, the Code Enforcement Board had a hearing. Mr. Foltz attended the hearing. The purpose of the hearing was to make a recommendation to city council as to whether or not civil action should be initiated in order to address the code enforcement violations. The hearing was conducted and the Code Enforcement Board unanimously recommended to city council that civil litigation be instituted and that a foreclosure action be brought to enforce the liens and collect from the property.

Under the city's code enforcement ordinance, the city council acts upon the recommendation of the Code Enforcement Board. Mr. Nienaber informed council they may follow the recommendation in full, find no violations exist, or find a foreclosure action be instituted and the property be sold to satisfy the liens. City council may also find any other reasonable steps they deemed necessary. As the Code Enforcement Board has criteria to follow, city council also has criteria which must be followed.

Mr. Nienaber provided city council with the Exhibit List and the Hearing criteria which must be considered to determine the course of action.

Hearing Criteria which must be met includes:

1. Whether the violator, Mr. Foltz, was given notice of the violations as required under the City of Florence Ordinance and by the Kentucky Revised Statutes. Mr. Nienaber stated Mr. Kleier will testify that the notices were given.
2. Whether seeking a monetary damage against the violator, Mr. Foltz, would be an appropriate course of action. Mr. Nienaber relayed not only is the course of action appropriate, it is the only course of action.
3. Whether Mr. Foltz has demonstrated an indifference to or disregard for the necessity of compliance. From the testimony presented, Mr. Nienaber opined this will also be clear.
4. Whether or not the violations in place constitute a danger to the residents in the vicinity or interfere with the peaceful enjoyment of their property.
5. Whether or not the violations have existed over a period of time which exacerbates the situation in light of the conditions that exist.
6. Whether or not the convictions under the citations have found to exist since the enactment of the criteria. Mr. Nienaber stated the Ordinance for which we are following was adopted several years ago.

Mr. Nienaber called upon the witness, Joshua Hunt, Business and Community Development Director, to testify. Mayor Whalen swore in the witness, Joshua Hunt.

Mr. Nienaber: State your name please.
Witness Hunt: Josh Hunt.
Mr. Nienaber: Who are you employed with?
Witness Hunt: City of Florence.
Mr. Nienaber: Were you employed with the city in November of 2017?
Witness Hunt: I was.
Mr. Nienaber: Please refer to Exhibit 1 of the packet. Do you recognize that document? (Witness was provided a packet for review)
Witness Hunt: I do.
Mr. Nienaber: What is that?
Witness Hunt: That is the Settlement Agreement.
Mr. Nienaber: Is that the agreement you negotiated with Mr. Foltz?
Witness Hunt: It is.
Mr. Nienaber: And signed in November of 2017?
Witness Hunt: November 20.

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Mr. Nienaber: November 20, 2017?
Witness Hunt: That is correct.
Mr. Nienaber: Has Mr. Foltz paid the \$7,992.00?
Witness Hunt: He did.
Mr. Nienaber: Has he had violations since that time?
Witness Hunt: Yes.
Mr. Nienaber: When you negotiated that agreement with Mr. Foltz, entered into on behalf of the city, was Mr. Foltz aware of conditions of this agreement?
Witness Hunt: He was.
Mr. Nienaber: Was it made known to him that under no circumstances that he had to comply with all of code enforcement regulations?
Witness Hunt: Correct.
Mr. Nienaber: And he has breached that agreement?
Witness Hunt: Yes
Mr. Nienaber: That agreement provides that if Mr. Foltz breaches the agreement, the entire \$120,958.75 of accumulated fines and penalties, becomes due and owing?
Witness Hunt: Correct.
Mr. Nienaber: The city can proceed accordingly?
Witness Hunt: Correct.
Mr. Nienaber: That is all I have for this witness.

Mr. Nienaber called the witness, Jeremy Kleier, Community Services Superintendent. Mayor Whalen swore in the witness, Jeremy Kleier.

Mr. Nienaber: State your name.
Witness Kleier: Jeremy Kleier.
Mr. Nienaber: Where are you employed?
Witness Kleier: City of Florence.
Mr. Nienaber: Where you employed there in 2017?
Witness Kleier: Yes I was.
Mr. Nienaber: In what capacity?
Witness Kleier: Community Services Superintendent.
Mr. Nienaber: Have you had the occasion to become involved with Mr. Foltz at 10 Valley Drive, Florence, Kentucky?
Witness Kleier: Yes.
Mr. Nienaber: Where you in attendance at the Code Enforcement Hearing in June of this year?
Witness Kleier: Yes.
Mr. Nienaber: Did the Code Enforcement Board take action on the issue?
Witness Kleier: Yes.
Mr. Nienaber: Referring to Exhibit 6 of the packet which is captioned Code Enforcement Board Foreclosure 001-2020.
Witness Kleier: Okay.
Mr. Nienaber: Was that the action that was taking by the Code Board unanimously at that meeting?
Witness Kleier: Yes.
Mr. Nienaber: Attached to that recommendation is a statement that you prepared as an attachment, is that correct?

Witness Kleier: Yes.
Mr. Nienaber: What was your recommendation?
Witness Kleier: To proceed with foreclosure.
Mr. Nienaber: In that recommendation you addressed each of the six criteria I mentioned earlier, correct?
Witness Kleier: Yes.
Mr. Nienaber: Did you find each of those criteria to be met?
Witness Kleier: Yes I did.
Mr. Nienaber: As it relates to Mr. Foltz's 10 Valley Drive, Florence, Kentucky?
Witness Kleier: Yes.
Mr. Nienaber: And is it your recommendation, as it was the Code Board, that civil action be taken against Mr. Foltz?
Witness Kleier: Yes.
Mr. Nienaber: Exhibit 7, represents a summary, is that correct?
Witness Kleier: Yes it is.
Mr. Nienaber: And that summary is an itemized listing of the liens filed, citations issued, and amounts due and owing, is that correct?
Witness Kleier: Yes it is.
Mr. Nienaber: As we are here this evening, the amounts due and owing for code violations in the sum of \$96,604.28, is that correct?
Witness Kleier: Yes it is.
Mr. Nienaber: Has Mr. Foltz been given notice of these citations and all of these violations?
Witness Kleier: Yes.
Mr. Nienaber: Has he ever appealed, to your knowledge?
Witness Kleier: No.
Mr. Nienaber: Has he ever asked for a Hearing in writing to your knowledge?
Witness Kleier: No.
Mr. Nienaber: And you were at the June 2020 Hearing?
Witness Kleier: Yes.
Mr. Nienaber: Was Mr. Foltz there?
Witness Kleier: Yes.
Mr. Nienaber: Did he present his case?
Witness Kleier: Yes he did.
Mr. Nienaber: And the code board rejected that?
Witness Kleier: Yes.
Mr. Nienaber: And they recommended that foreclosure be initiated?
Witness Kleier: Yes they did.
Mr. Nienaber: That's all I have with this witness.

Mr. Nienaber introduced the following documents into record:

- Exhibit 1- Settlement Agreement and Mutual Release of November 20, 2017;
- Exhibit 2 – Claim of Liens filed post November 20, 2017 Agreement;
- Exhibit 3- July 7, 2017 Title Report compiled by Attorney Fred Summe outlining all of the Liens and Mechanics Liens filed in the Boone County Clerk's office;

- Exhibit 4 – July 16, 2020 Title Report prepared by Attorney Fred Summe and identifies each of the liens filed after the agreement was recorded;
- Exhibit 5 – Identifies each of the specific six criteria which as referenced in City of Florence Ordinance O-33-05;
- Exhibit 6 – Florence Code Enforcement Board Recommendation of Foreclosure against Steve Foltz and 10 Valley Drive;
- Exhibit 7 – Summary of the liens charges, citations costs, fines, and penalties in an amount of \$96,604.28 as of today.
- Exhibit 8 – Pre-November 17, 2017 liens filed prior to November of 2017 when the agreement was signed.

Mr. Nienaber stated based upon these exhibits and the testimony presented to council, he requested council consider the six elements. Mr. Nienaber opined elements one, two, and three, must be found in the affirmative, whether the violator, Mr. Foltz, had been given notice. Mr. Nienaber stated Mr. Foltz has been given notice. Additional elements to consider include whether seeking civil damages and filing a civil action is appropriate at this time and whether or not the conduct of Mr. Foltz has demonstrated an indifference or disregard for the necessity of compliance with the applicable city ordinance by statement, conduct, or inaction with regard to the violations. Mr. Nienaber stated all three of those are present as well.

Element number four includes whether the property in the current condition constitutes a present danger to the public health, specifically the neighbors of 10 Valley Drive that would interfere with their ability to peaceably enjoy their property. Whether for that piece of time that the violation existed is in relationship to the severity of the particular violations requiring civil proceedings, and whether or not these violations existed after the six elements were all found.

Mr. Nienaber stated city council can move forward as he indicated and adopt the resolution of the Code Enforcement Board or they can modify it. Mr. Nienaber referenced Exhibit 6, the Resolution Recommending Foreclosure from the Code Enforcement Board, Section 3, “The Code Enforcement Board hereby recommends to the City Council that it authorize and direct the City Attorney to file such suit seeking foreclosure...” of 10 Valley Drive. Mr. Nienaber relayed their recommendation was supported by competent evidence, that the six criteria had all been met as reported in Jeremy Kleier’s March 13, 2020 recommendation and report, and that civil action be taken to recover all outstanding fines and penalties now due and owing.

Mr. Nienaber opened the floor for questions by city council.

Councilmember Aubuchon inquired as to the amount of \$7,992.72 paid by Steve Foltz. She questioned whether Mr. Foltz would receive credit for the amount paid. Mr. Nienaber responded, “Yes” and continued, as set out in Exhibit 7, the amount due and owing is \$96,604.28.

Councilmember Aubuchon inquired as to whether the amount due and owing was more than what the real estate was worth according to the PVA. Mr. Nienaber believed it would be. However, Mr. Nienaber stressed the agreement stated if Mr. Foltz defaulted, the entire amount would be due and owing and the city could pursue. Liens have been filed since the agreement and will need to be enforced.

Councilmember Huff inquired as to whether Mr. Foltz would be provided an opportunity to speak on his own behalf. Mr. Nienaber responded, "Yes".

Mr. Nienaber had nothing further at that time and provided the City Clerk all of the Exhibits to be entered into the record.

Mr. Nienaber informed city council should they choose to move forward, they must make recommendations by Findings of Facts via Executive Order.

Mayor Whalen called upon Steven Foltz to present his case.

Mr. Foltz stated his house is not a danger. He also stated people can walk around and survive, he was unsure what was being called dangerous. Mr. Foltz had photographs of his real estate and advised council if they would perform a Google search of his residence, the house no longer has the same appearance and has been improved.

Mr. Foltz stated citations written by Code Enforcement Officer Macaluso are inaccurate. Mr. Foltz stated he was "shut down" as the last hearing and was informed the case would be referred to city council. Mr. Foltz referenced photographs shown at the code enforcement hearing and stated those photographs showed a license plate that stated his car was not registered. Mr. Foltz stated his cars are licensed and registered. Mr. Foltz stated he sent a voicemail to the code officer, he was dyslexic and unable to send a letter. He has a learning disability. Therefore, he stated every week he was getting a citation, he would call and leave a voicemail. The voicemail stated the city wanted to help and he never received a return call.

Mr. Foltz stated he received a citation to paint his house in December. Painting in December is not feasible. There was an overhang on his house and he repaired with a paper towel. He received another citation for a stone that was not underneath the downspout. At the time, Mr. Foltz was unaware of the stone and called Jeremy Kleier. Mr. Foltz stated he spoke with Mr. Kleier and he was unaware of the stone and would let him know. Mr. Foltz stated he received a citation for a stone that no one knew what it was, an erosion stone.

He also had a shed that he started to build and then got injured. He worked at Master Provisions and lost that job. He next worked at McClain, which was a physical job, and he got injured. Following his injury, he was in physical therapy for six months and unable to work. He has since obtained a job and has the ability to pay his bills again. He believes a lot of the items which need to be done are financial and he does not have the funds to repair. Also, a lot of the repairs are physical and he is trying to take care of things that need to be done. Mr. Foltz stated he took the shed down when he was able. Mr. Foltz stated he spoke with Mike and let him know and was told they would deal with it. He believed that after that it was never an issue.

Mr. Foltz feels he had done everything he could to appease everybody and the only violations remaining are the two cars. One of the cars is a BMW which is a "rat rod". He believes some people see the beauty in his cars and others do not. His cars have a rough appearance and do not look great, but they function.

As for the rest of the house, Mr. Foltz stated some people would be happy to have his landscaping and he did not see anything dangerous.

Mr. Foltz questioned as to who would sign an agreement wherein they were required to maintain their property forever. He stated he was originally informed once the fines and fees were paid, the agreement was done. He stated he would not sign an agreement that stated forever, no matter what from here on out, that if he received a violation, it would go back and have his house taken away. He opined that would have been a lost cause. He received a citation for tall grass one time and he mowed the entire grass but was unable to weed eat. He referenced that is part of the violations.

Mr. Foltz feels he is being harassed because he believes his neighboring houses look just like his. Stated there are violations in his neighborhood that are not fixed for months. Felt he is being harassed to paint in the winter. As soon as he was able to paint, he did paint all of his trim. Does not believe the downspouts and gutters are dangers to anyone. To replace the gutters and downspouts, this requires money. Mr. Foltz stated Covid-19 took people's money and their financials. He is currently at 300 in his financials because he spent everything he had with his credit. Mr. Foltz stated he is being asked to do stuff he cannot do and he is not lucky enough to have money in the bank. Mr. Foltz stated he was not blessed that way, he was blessed with a lower education and a disability.

Mayor Whalen questioned Mr. Nienaber as to the photographs of the surrounding neighbors provided by Mr. Foltz. Mr. Nienaber objected to any testimony regarding the neighbors' homes as the property in discussion is for 10 Valley Drive. Mr. Foltz stated the photographs show his neighboring homes are dangerous and his home is not.

Councilmember Huff inquired of Mr. Foltz as to his length of residence at 10 Valley Drive. Mr. Foltz stated he has resided in the residence since 2011 off and on. Mr. Foltz currently does not reside in the home because his fiancé and family does not want to reside in the home because of the neighborhood. Mr. Foltz believes there is drug activity on the street and other hazardous conditions. Mr. Foltz believes his neighbors have items on their porch "like something you see in the Appalachian Mountains". However, he feels he is being targeted. Councilmember Huff informed Mr. Foltz his neighbors may have been cited as well, however, we were here to discuss his residence. Mr. Foltz inquired as to what was dangerous about his house.

Councilmember Winn inquired as to whether Mr. Foltz signed the Settlement Agreement dated November 20, 2017. Mr. Foltz replied, "Yes". He consulted with his attorney and was told to check language in the agreement. Mr. Foltz was under the assumption that once the agreement was done he was finished. Mr. Foltz stated that was not the case and he is now here again.

Mayor Whalen questioned Mr. Hunt whether Mr. Foltz ever raised a question or asked with reference to the continuation of the agreement once the agreement was paid off and Mr. Hunt's recollection of those conversations. Mr. Hunt stated while it was three years ago, he recalls two items being reiterated in those meetings. Mr. Hunt stated "One was if he missed a payment, the city would automatically enforce the liens. And I think it was section 4 of the agreement, what were talking about, which is keeping the property in compliance, we explicitly talked about it in that meeting and there was two other witness. The property had to be kept in compliance, or at any point in time, or the city would move forward, or preserve the right to move forward with that action. So it was discussed." Mr. Hunt also recalled Mr. Foltz calling at one point to ask the city if that section be removed and the request was denied.

Councilmember Osborne asked Mr. Foltz if at any given time when he continued to receive the citations whether he attempted to correct the deficiencies or communicate with either Mr. Hunt, Mr. Kleier, or the Code Enforcement Board. Mr. Foltz replied he did not contact Mr. Hunt, he saw him as more of a financial person and did not think of him as code enforcement. Mr. Foltz stated he did call Mr. Kleier with regard to the water stone and tried to make several attempts at phones calls. Mr. Foltz stated he is unable to write letters and he was not given the opportunity to correct the violation prior to a citation being issued. Mr. Foltz stated he asked Mr. Kleier whether he was able to correct the violation prior to a citation and was told no. Mr. Foltz was unaware of the stone issue and his downspouts.

Councilmember Osborne stated Mr. Foltz should have known he was in violation when he received the citations. Mr. Foltz stated he took care of the violations. However, Councilmember Osborne asked Mr. Foltz if he had taken care of every violation. Mr. Foltz replied the only thing he had not taken care of was the gutters. He stated the driveway was repaired, he pressure washed the house and painted all the trim he could. He works 6 days a week 70 hours a week.

Councilmember Osborne inquired as to why Mr. Foltz believed code board made the recommendation they did. Mr. Foltz stated because code board did not want to listen, the cars are not in violation, nor part of the fine. The truck referenced on the citation is gone. He gave the truck to a neighbor after he was unable to licensed or sell the vehicle. He continued to receive citations and believes that the code officer is not aware that his tags are registered and the photograph taken state the year 2020.

Mayor Whalen requested Code Enforcement Officer, Mike Macaluso, to provide testimony on behalf of the citations issued. Officer Macaluso was sworn in and was questioned by Mr. Nienaber.

Mr. Nienaber: Mike, you have issued citations during 2020, have you not?

Officer Macaluso: Yes sir.

Mr. Nienaber: For disabled cars and unlicensed cars?

Officer Macaluso: Yes sir.

Mr. Nienaber: Are those still at the house at 10 Valley Drive?

Officer Macaluso: The last time I checked the truck that was in the rear of the property that Mr. Foltz built a temporary fence, to my best recollection, it is still there. I would like to address the splash block, which is what we call it, under the downspouts. That is a subdivision regulation that we do enforce. Unfortunately, that is not what we were enforcing. What is there is a 55 gallon drum full of stagnant water. We were issuing citations for the stagnant water. He did remove the barrel. While he moved the barrel, he ripped down the downspout, which caused the downspout to be in disrepair. The downspout ended up in the front yard, which is what we would consider trash and debris. He was not technically being cited for the splash block, he was being cited for the stagnant water and when he fixed that violation, he created two other violations with the missing downspout and trash and debris.

Mr. Nienaber: Mike, the citations issued for Mr. Foltz, were the issued pursuant to the Code Enforcement Ordinance. (Witness requested clarification.) When you issued the citations to Mr. Foltz, where they issued in accordance with the Code Enforcement laws?

Officer Macaluso: Yes sir.

Mr. Nienaber: Did Mr. Foltz ever file an appeal or ask for a hearing?

Officer Macaluso: No, not that I am aware of.

Mr. Nienaber: Do the citations issued specifically set forth their rights as to the how to go

about requesting a hearing before the code board?

Officer Macaluso: Yes, it states at the bottom of the page.

Mr. Nienaber: Has Mr. Foltz ever asked for a hearing at code board?

Officer Macaluso: Not that I am aware of.

Mr. Nienaber: Has he ever showed up to your knowledge?

Officer Macaluso: Besides when we issued foreclosure action.

Mr. Nienaber: In June of 2020?

Officer Macaluso: Correct.

Mr. Nienaber: Exhibit 2, you issued citations on January 9, January 2, January 23, and January 16. Four citations including disabled vehicle, disabled truck, unlicensed truck, unlicensed truck in side yard, fence in disrepair, and trash and debris. Do those conditions still exist absent the truck?

Officer Macaluso: I believe he has gotten the vehicle licensed and one was parked on an unpaved surface and now in driveway. To my best knowledge, the trash and debris in the rear of the property still exists.

Mr. Nienaber: Has Mr. Foltz ever contacted you or anyone else at code enforcement to your knowledge asking for additional time to make these problems go away?

Officer Macaluso: The only interaction I had with Mr. Foltz was early on in this case. I received 5 voicemails in a matter of about 15 minutes. Literally would leave me a two minute voicemail, hang up, and call right back. Unfortunately, I was out in the field. Came back to five missed calls from Mr. Foltz. Listened to all five voicemails, called him on several occasions to try to speak to him and never got a phone call back. The only other interaction I had with Mr. Foltz was when I was issuing one of the citations, I walked to the front door, I knocked, Mr. Foltz opened the front window, stated he was in the shower and to leave it on the door. Those are the only interactions I have had besides the code enforcement board.

Mr. Nienaber informed council it is within their findings they could recommend that only fines, penalties, costs, and expenses after November 2017 be assessed. However, he stressed the original agreement entered into stated should Mr. Foltz incur any violations in the future the city could pursue the entire amount.

Councilmember Huff inquired where Mr. Foltz did live since he was not residing in the residence. Mr. Foltz stated he is living at his fiancé's house in Union with her and children and at his residence. Councilmember Huff inquired as to why Mr. Foltz did not move the cars with him to her residence. Mr. Foltz stated there was no parking available at her condo residence. When he is at her condo, he is required to park his F-350 truck in a little spot and there is no additional parking.

Councilmember Aubuchon inquired as to the property tax bill referred in the exhibits and whether Mr. Foltz was current. Mr. Foltz stated he has been unable to pay due to financial issues. He is now trying to bring his bills current. He lost his employment at Master Provisions and then the next job he obtained, he was hurt due to the job being physically demanding. He is 47 and unable to perform the heavy labor. He is now working in a less strenuous employment.

Councilmember Aubuchon informed Mr. Foltz as a city we have rules and regulations to protect all of the properties and maintain property values. Therefore the city attempts to achieve a balance of not being overbearing on properties, however does recognize if neighbors complain. It appears Mr. Foltz's property has continued to have property maintenance issues. She felt the settlement agreement entered into with Mr. Foltz previously was a move in the right direction and opportunity

for a chance. However, Mr. Foltz has not had the ability to maintain or upkeep the property. If given an extra chance would Mr. Foltz have the ability to comply?

Mr. Foltz replied he is hopeful to be able to fix the property to use and obtain residency somewhere else. Mr. Foltz stated his fiancé would not live in the house due to the neighborhood. He does not live in the house because the neighborhood is unsafe.

Mr. Foltz stated he received citations weekly for painting in December and he is unable to paint in December. Mayor Whalen advised Mr. Foltz the Code Enforcement Board grants extensions to allow citizens time to come into compliance.

Mayor Whalen questioned Mr. Foltz with regard to stating that he does not live in the house because the neighborhood is unsafe? Mr. Foltz replied yes, he stays in the house when he can and when he needs to sleep.

Mr. Nienaber questioned Mr. Foltz:

Mr. Nienaber: Did you not receive a citation in April of 2019?

Witness Foltz: What were they for?

Mr. Nienaber: Trash, paint, disrepair and disabled vehicles.

Witness Foltz: No, I painted the backdoor overhang and it has been taken care of.

Mr. Nienaber: But you received that citation in April of 2019?

Witness Foltz: One of them I did, yes.

Mr. Nienaber: You also received a citation in September of 2019 for disabled vehicles, disrepair, paint, and weeds, did you not?

Witness Foltz: I have to but some of the stuff is paint and got taken care and are they for same thing?

Mr. Nienaber: Disabled vehicles,

Witness Foltz: They are not disabled. If you want to pull up my history of when my cars were registered, they will show you when my cars are registered, say when my car was registered. I can even pull up my Progressive Insurance and you can have a full record of when they were insured. Even the Audi, the old wagon, it has full coverage on it. Why would I do that to a car that has stripped out interior? Probably because it has more value in the suspension than what the car is worth body wise.

There being no further questions and comments, Mayor Whalen and council moved to the Caucus Room to deliberate at 6:59 p.m.

Mayor and City Council returned to the Council Chamber at 7:28 p.m. and reconvened.

Mayor Whalen requested Mr. Nienaber read the findings of city council:

FINDINGS OF FACT AS ISSUED BY FLORENCE CITY COUNCIL

This matter came on for hearing before the Florence City Council on August 25, 2020, at 6:00 p.m., regarding Steven C. Foltz, 10 Valley Drive, Florence, Kentucky, pursuant to Ordinance No.

O-33-05. After hearing, and consideration of all evidence submitted, the Florence City Council makes the following Findings of Fact and Recommendation:

1. Steven C. Foltz has received proper notice of all violations and hearings as required by the City of Florence Code Enforcement Ordinance.
2. Steven C. Foltz has failed to comply with the terms and conditions of the Settlement Agreement and Mutual Release dated November 20, 2017, in that he has failed to comply with the City's Code Enforcement Ordinance since that Agreement was signed by allowing the property to deteriorate and by allowing 6 Citations and 4 Liens being filed.
3. Currently there are outstanding Code Enforcement Liens filed against 10 Valley Drive, Florence, Kentucky.
4. In all, there have been in excess of 56 Citations issued against 10 Valley Drive, Florence, Kentucky, prior to and after November 20, 2017.
5. Steven C. Foltz has not taken reasonable efforts to comply with the Code Enforcement Ordinance and he has demonstrated a continuous refusal to comply by his conduct and inaction.
6. Steven C. Foltz has allowed 10 Valley Drive, Florence, Kentucky, to reach such a state of disrepair that it constitutes a present danger and nuisance to the public at large and particularly to the residents in the vicinity of 10 Valley Drive, Florence, Kentucky.
7. Steven C. Foltz's disregard of and refusal to comply with the Code Enforcement Ordinance has persisted over an extended period of time. He has shown no indication that he will ever attempt to reasonably comply with the Code Enforcement Ordinance and/or prior agreements.
8. Steven C. Foltz has never filed a formal appeal from any Code Enforcement Board action.
9. Steven C. Foltz has received far in excess of 3 convictions of the same violations which have been found to exist for an extended period of time.
10. Filing a civil suit seeking money damages against Steven C. Foltz would be appropriate under the circumstances and the only course of action available to the City at this time.

RECOMMENDATION

Based upon the Findings of Fact, the Florence City Council hereby unanimously recommends that a Municipal Order be entered directing the following:

1. The City Attorney be and he is hereby authorized and directed to immediately initiate a civil proceeding against Steven C. Foltz for the collection of all outstanding fines, penalties, interest, costs, attorney's fees, and any and all other charges accrued after November 20, 2017, as permitted under the Code Enforcement Ordinance and/or Kentucky Revised Statutes.
2. The civil proceeding is directed to recover all monetary damages incurred by the City of Florence after November 20, 2017; seek an Order and Judgment directing the sale of the property located at 10 Valley Drive, Florence, Kentucky; and to seek any and all other relief as may be permitted and authorized under the Code Enforcement Ordinances and/or Kentucky Revised Statutes.

MUNICIPAL ORDER MO-12-20:

Mayor Whalen read Municipal Order MO-12-20. A Municipal Order directing the City Attorney to begin civil proceedings in the Boone Circuit Court pursuant to Ordinance No. O-33-05 against Steven C. Foltz and 10 Valley Drive, Florence, Kentucky; and further adopting the Recommendation of the City of Florence Code Enforcement Board seeking collection of all outstanding fines and costs from Steven C. Foltz and enforcement thereof by Judicial Sale of 10 Valley Drive, Florence, Kentucky.

Mayor Whalen called for a motion to approve Municipal Order MO-12-20. Councilmember Huff motioned to approve Municipal Order MO-12-20 with a second from Councilmember Carroll. Mayor Whalen requested a Roll Call Vote. Councilmember Carroll, yes; Councilmember Winn, yes; Councilmember Huff, yes; Councilmember Aubuchon, yes; Councilmember Osborne, yes. **Roll call recognized five yes votes approving Municipal Order MO-12-20.**

FIRST READING OF ORDINANCE O-11-20:

Mayor Whalen read Ordinance O-11-20. An ordinance annexing certain territory consisting of a parcel of approximately 2.735 acres located at 6136 Hopeful Church Road, adjacent to the city limits. (Decastro Management, LLC Property)

Mayor Whalen called for a motion to approve the first reading of Ordinance O-11-20. Councilmember Aubuchon motioned to approve, with a second from Councilmember Huff. **All councilmembers present voted aye.**

Business and Community Development Director, Joshua Hunt, stated the ordinance is regarding Kerry Toyota and the property to be annexed is to the south of the existing Kerry Toyota property.

As discussed as the previous council meeting, Duke Energy will be installing a utility line and will have an easement across the property. The annexation and proposed lot will meet all zoning regulations in accordance with the residential areas to the south. The second reading will not occur until the annexation goes through the Boone County Planning process.

MAYOR'S REPORT:

- The City of Florence offices are open to in person business by appointment only. Please contact the office you need to conduct business with. A list of the telephone numbers are available on our website or contact (859)371-5491 for general information.
- Check our website at florence.ky-gov for upcoming events within the city. Current events and cancelations will be updated on our website and through social media.
- Voters are now eligible to request their absentee ballots. To request an absentee ballot – go to GoVoteKY.com and click on the “Absentee Ballot Request.”

RECOGNITION:

Mayor Whalen asked if any of the following desired recognition:

City Coordinator, Joshua R. Wice:

Mr. Wice did not desire recognition.

Department Heads:

Fire/EMS Chief, Scott Knoll:

Chief Knoll did not desire recognition.

Public Services Director, Eric Hall:

Mr. Hall did not desire recognition.

Chief of Police, Tom Grau:

Chief Grau did not desire recognition.

Members of City Council:

None desired recognition.

Audience:

Steve McDaniel, resident of 4 Valley Drive for 50 years, reported 2 Valley Drive still has issues in the rear of their residence. He can observe from his backyard and believes their yard is a mess including a hot tub with no lid. Mr. McDaniel previously met with public services and the issues are still outstanding. Mr. McDaniel also reported an issue with the sewer and the neighbors' animals.

Mayor Whalen informed Mr. McDaniel a citation has been issued to 2 Valley Drive and the process is ongoing.

Mr. McDaniel again stated the neighbor's property is in disrepair and he has to live near it. Believes his house has more value and he wants to remain in his home and pass on to his children. He knows his ultimate home is in heaven. However, he is living today and he maintains his home with the help of family. He thanked council and requested the sewer be investigated.

Rick Sherman, resident of 6 Valley Drive, and neighbor of Steve Foltz, stated he was impressed with the improvements Mr. Foltz has made to his residence over the last six months. He never felt danger living in the neighborhood because of Mr. Foltz's property.

Myrna Sherman, resident of 6 Valley Drive, requested to speak on behalf of her neighbors. She stated she has witnessed a hose coming out of 2 Valley Drive's basement window. In 2013, she assisted the neighbors during a tragedy and at that time there was a hose in the basement. Unfortunately, she smells the odors from the home. Mrs. Sherman stated animal control has been to the house and the eight dogs are neglected. The hot tub has no lid which collects rain water and causes mosquitoes. She recalled a severe storm a few months ago and a tree fell into Mr. Foltz's yard. Mr. Foltz came home at night and was removing the tree in the dark by flashlight. Mrs. Sherman stated as far as Mr. Foltz's wife and children, she would not want to live in his house either with the neighbors. The owner of 8 Valley Drive is attempting to evict the tenants. The police have also been called to the residence.

Councilmember Huff inquired as to the sanitation issue mentioned. Public Services Director, Eric Hall, stated the issue has been evaluated and he will provide an update council following re-inspection.

Code Officer Macaluso stated he previously spoke with Mr. McDaniel and assured Mr. McDaniel he had not forgotten their conversation. However, unfortunately, due to unforeseen issues with the property at 2 Valley Drive, enforcement was not able to continue and he was advised to hold off. Those issues have been eliminated and citations are now being issued again to the property. With regard to the sewage and the reported hose, Officer Macaluso is not able to issue a citation unless he sees himself. Officer Macaluso informed Mr. McDaniel and Mrs. Sherman he would provide them with his number and to call him when the violation occurs and he will inspect.

Florence City Council
Minutes: Tuesday, August 25, 2020

ADJOURNMENT:

There being no further business to come before the Council, Mayor Whalen called for a motion to adjourn. Councilmember Huff so moved, with a second from Councilmember Winn. **Councilmembers present voted aye**, the time being 7:49 p.m.

APPROVED:

/s/ Diane E. Whalen
Diane E. Whalen, Mayor

ATTEST:

/s/ Melissa Kramer
Melissa Kramer, City Clerk