



**Florence City Council
Business Meeting
Tuesday, August 24, 2021
6:00 p.m.**

MINUTES

The City Council of the City of Florence, Kentucky, met in regular session on Tuesday, August 24, 2021, 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 registered present: Mel Carroll, J. Kelly Huff, David Osborne, Patricia Wingo, and Gary Winn. Absent was Dr. Julie Aubuchon (Vice-Mayor) (present at 6:02 p.m.).

Staff members present were: Assistant City Attorney, Thomas Nienaber; CFO/HR, Linda Chapman; Chief of Police, Tom Grau; Fire/EMS Chief, Rodney Wren; Public Services Director, Eric Hall; Business & Community Development Director, Joshua Hunt; City Engineer, Bill Viox; City Clerk, Melissa Kramer; Videographer, Spencer Foreman; and Police Lieutenant, Roger Allen.

The following were also present in the audience: Fire/EMS Chief, Scott Knoll; Fire/EMS Department Employees; Tony and Debbie Mason, Residents of Florence; Family of Tony Mason; Police Officer Josh Dalton; Florence Police Department Employees and Friends of Police Officer Josh Dalton; State Senator John Schickel; State Representative Sal Santoro; Executive Director/CEO of the Kentucky League of Cities, J.D. Chaney; Director of Public Affairs of the Kentucky League of Cities, Bryanna L. Carroll; Legislative and Visual Communications Manager at Kentucky League of Cities, Chris Williams; Community Support Services Superintendent, Jeremy Kleier; Fire Marshall, Randy Childress; Code Enforcement Board Chairman, Jim Johnson; Events Consultant, Victoria Wells; Assistant City Clerk, Brandi Roundtree; Ms. Kathleen Reutman, Executive Director of Student/Community Services of the Boone County Schools; Applicant for Marshall Land Management, Lee Cahill; Jenna Kemper, Resident of Florence; Lesley Chambers, Resident of Florence; Brian Kinross, Resident of Florence; Donald Meagher, Resident of 37 Grand Avenue; Trisha Scheyer, The River City News; and Thomas Judd, observer.

APPROVAL OF MINUTES:

Mayor Whalen called for a motion to approve the minutes of the August 10, 2021, business meeting. Councilmember Huff motioned to approve the minutes with a second from Councilmember Winn. **All councilmembers present voted aye.**

PROCLAMATION:

Mayor Whalen acknowledged and thanked Fire/EMS Chief Scott Knoll for his service as the Fire/EMS Chief of the Florence Fire/EMS Department and his many years of service to the City of Florence. Mayor Whalen recognized Fire/EMS Chief Scott Knoll and issued a Proclamation proclaiming August 24, 2021 as Chief Scott Knoll Day reading the following Proclamation into record:

***WHEREAS**, on August 31, 2021, Fire/EMS Chief Scott Knoll will retire from the City of Florence Fire/EMS Department; and*

***WHEREAS**, his retirement marks 20 years of dedicated public service with the City of Florence and dedicated service to the residents of Florence; and*

***WHEREAS**, Chief Knoll began his career with the City of Florence Fire/EMS Department on September 17, 2001 as a Firefighter/EMT and continuously progressed through the ranks holding positions of Captain, Commander of Training Division, Assistant Fire/EMS Chief, and Fire/EMS Chief; and*

***WHEREAS**, over his 20 years of employment, Chief Knoll has displayed the highest example of character, ethics, morals and unselfish service; and*

***WHEREAS**, on behalf of the entire City of Florence, I want to express our sincere appreciation to Scott for his loyalty to the City of Florence and wish him much happiness as he begins this exciting new chapter in his life.*

NOW, THEREFORE, I, Diane E. Whalen, Mayor of the City of Florence, and on behalf of the members of Florence City Council, do hereby proclaim August 24, 2021, as:

“CHIEF SCOTT KNOLL DAY”

in the City of Florence, and encourage all citizens and employees to join me and the Florence City Council in congratulating Chief Knoll on an outstanding career with the City of Florence and wishing him many continued years of happiness and good health.

***IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the City of Florence, Kentucky, to be affixed hereto, this 24th day of August, 2021.*

Chief Knoll thanked the Mayor and stated twenty years went by in the blink of an eye. Over the past week, Chief Knoll had the opportunity to sit down with each of the shifts and go over the “final lecture”. He has always enjoyed teaching and instruction and having the ability to meet with each of the shifts brought perspective. Chief Knoll stated: “Perspective of, coming into an organization as a twenty-two year old kid, I knew where Florence was, and it had always meant a lot to me, that when I got on here, I wanted to stay here, there was nowhere else I wanted to be. I look around the room and all the people in front of me and the people standing behind me around

the back, you have made it an absolute wonderful career for me and I can't thank you guys enough. Thank you very much."

RECOGNITION:

Mayor Whalen called upon Florence Residents, Tony and Debbie Mason, and Florence Police Officer Josh Dalton. Mr. Mason read a statement: "To the City of Florence, Florence Police Department, and especially Officer Josh Dalton, an event happened in the early morning hours of Wednesday, May 19, that changed our lives forever, Tuesday night, May 18, my wife and I attended a graduation of our twin nephews at BB&T Arena. The details after the graduation are mostly what I have been told because I only remember a few bits of it firsthand. After the event, we made a stop to pick up our granddaughter in Independence, once home, we had a typical night, enjoyed an ice cream, watched some television, afterward we went to the bedroom to turn in for the night. My wife noticed at one point that I was not breathing. She said I had a wide eye stare on my face and wasn't breathing. When she noticed I wasn't responding to her shaking or calling my name, she called 911. She then began to give me chest compressions. At one point, she told me I let out a big gasp. She only left my side long enough to unlock the front door and then return to my side to give me compressions. The first officer on the scene was Officer Dalton. While still administering compressions, I once again let a big gasp of air. At this point, Officer Dalton told my wife to move so he could take over. Officer Dalton began chest compressions and in doing so, he was able to restore my pulse, get my heart beating again, and my breathing started again. He was able to maintain my breathing until the life squad showed up and could get me to the hospital for more treatment. Once the life squad arrived, they used paddles to shock me to get my heart back into rhythm. On the way to the hospital, those paddles were used once more. Once at the hospital, I was given an EKG and an angiogram. It was determined that I needed an ICD or a defibrillator implanted in my chest. This was done the following day, and surprisingly I was released that Friday. I am thankful that my wife was by my side when all this was taking place. Her first aid CPR training came in handy, although, we never thought I would be the one tested on. However, we both feel that Officer Dalton deserves the most credit. His fast response time and quick actions are the key to me, standing here today. For that, we are forever grateful to him. Thank you from Tony and Debbie Mason and family."

Mr. and Mrs. Mason presented Officer Dalton with a plaque and thanked him. Mayor Whalen thanked Mr. and Mrs. Mason for expressing their gratitude to Officer Dalton and the city. She was grateful to see them both. She acknowledged and was thankful for the quick response of Officer Dalton, Fire/EMS personnel, and the hospital.

PRESENTATION:

Mayor Whalen introduced and welcomed Senator John Schickel. Senator Schickel thanked Mayor Whalen and City Council for inviting him to the meeting.

Senator Schickel stated he enjoyed working with the cities in Boone County and wanted to provide city council an update with regard to legislation. As a result of the influx and COVID-19, the legislature adopted a one year budget rather than a two year budget. In addition, legislation has

been passed with regard to the Governor's Emergency Orders. Senator Schickel stated he has always been an advocate for local control and was pleased with the ruling.

As Chairman of the Licensing and Occupations Committee, he has jurisdiction over matters pertaining to professional licensing including alcoholic beverage control and racing. He is delighted with the passing of historical racing and the ability to sponsor the bill. Senator Schickel was glad that Churchill Downs purchased Turfway Race Park and believes the new facility will be a wonderful addition to the area.

Councilmember Carroll encouraged everyone to go see the construction currently ongoing at Turfway Race Park. Senator Schickel agreed and stated everyone is excited as the venue will be part of the community and a first class facility upon completion.

Councilmember Winn thanked Senator Schickel for all of his work in the area and was appreciative of the support of certain legislation. Senator Schickel thanked Councilmember Winn and stated the Mayor, city council, staff at the City of Florence, and the KLC (Kentucky League of Cities), make his job easy.

Councilmember Aubuchon thanked Senator Schickel for his correspondence regarding the 2021 Regular Session Bills of Note which had passed. Senator Schickel stated it was not a complete list, just the highlights. He also felt it was important to note he did not support all of the bills, just included them for review.

Mayor Whalen asked Senator Schickel what everyone should paying attention to. Senator Schickel stated he believed school governance needs to change. In addition, he encouraged anyone with a small business to contact him with regard to legislation. He also voiced concern with regard to the criminal justice system. He intends on being an advocate for police and citizens.

Councilmember Carroll informed everybody Senator Schickel was a former Florence Police Officer. Senator Schickel stated at the time he was hired in 1977, he was hired by the Mayor Whalen's dad, Mayor Hop Ewing. He expressed his gratitude to Mayor Ewing for providing him the opportunity and also noted Councilmember Osborne was on the interview panel for which interviewed him. Mayor Whalen thanked Senator Schickel.

KENTUCKY LEAGUE OF CITIES PRESENTATION:

Mayor Whalen introduced J.D. Chaney, Executive Director/CEO of the Kentucky League of Cities, and Bryanna L. Carroll, Director of Public Affairs of the Kentucky League of Cities, to present the "Friend of Kentucky Cities" award.

Mr. Chaney thanked everyone and stated it was great to be back in person as it had been two years since he was at a Florence City Council Meeting. Mr. Chaney was in attendance to present two legislatures from the area with the 2021 Friend of the Kentucky Cities Award. The award is chosen by the Kentucky League of Cities Board of Directors. Mr. Chaney stated both honorees, Senator John Schickel and Representative Sal Santoro, both embrace good government and local control.

Mr. Chaney announced and commended the first honoree Senator Schickel on the efficiency of his office. During the past session, an issue arose with regard to licensing of city youth camps. The change would have required city youth camps to have the same licensing requirements as childcare centers. Senator Schickel had a bill which involved youth camps and was approached by the KLC to amend his bill. As a result, Senator Schickel sponsored Senate Bill 66 which will help cities safely and efficiently operate youth camps. Mr. Chaney thanked Senator Schickel and presented him with a plaque.

Mr. Chaney recognized Representative Sal Santoro as the next recipient. Mr. Chaney stated Representative Santoro is the main cheerleader for Kentucky's infrastructure. Representative Santoro has helped guide the policy and led the discussion to ensure there are moderate means to modernize the transportation system and the road formula. Representative Santoro sponsored House Bill 561 in the 2021 session to modernize Kentucky's road fund and continues to sponsor. Without his help, the bill may not have ever been discussed during session. Mr. Chaney thanked Representative Santoro and presented him with a plaque.

Mayor Whalen thanked Representative Santoro and Senator Schickel for all of their assistance in the area and continuing to be champions for our region.

FIRST READING ORDINANCE O-15-21:

Mayor Whalen read Ordinance O-15-21. An Ordinance relating to personnel; Amending Ordinance No. O-8-21 relating to the pay plan.

The Pay Plan is changed by a complete analysis of all positions and corresponding changes related thereto.

The full text of Ordinance O-15-21, including its exhibits, is available for examination in the office of the City Clerk of the City of Florence, Kentucky, in the Florence Government Center, 8100 Ewing Blvd., Florence, Kentucky, during regular office hours.

Mayor Whalen called for a motion to approve the first reading of Ordinance O-15-21. Councilmember Carroll motioned to approve, with a second from Councilmember Osborne. **All councilmembers present voted aye.**

SECOND READING ORDINANCE O-11-21:

Mayor Whalen read Ordinance O-11-21. An Ordinance Adopting and Approving a Zoning Map Amendment from Suburban Residential Two/Parkway Corridor Study Overlay (SR-2/PO) to Commercial Two/Planned Development/Parkway Corridor Study Overlay (C-2/PD/PO) for the northern, approximate 1.3 acres of the property located at 7544 Burlington Pike, Florence, Kentucky; and a Concept Development Plan in a Commercial Two/Planned Development/Parkway Corridor Study Overlay (C-2/PD/PO) Zone for the southern, approximate 1.23 acres of the property located at 7544 Burlington Pike, Florence, Kentucky, to allow an eating and drinking establishment, dog park, and food truck parking. (Marshall Land Management LLC)

This Ordinance adopts and approves a zoning map amendment and Concept Development Plan to allow an eating and drinking establishment, Dog Park, and food truck parking at 7544 Burlington Pike, Florence, Kentucky.

Mayor Whalen called for a motion to approve the second reading of Ordinance O-11-21. Councilmember Winn motioned to approve, with a second from Councilmember Aubuchon. **All councilmembers present voted aye.**

SECOND READING ORDINANCE O-12-21:

Mayor Whalen read Ordinance O-12-21. An Ordinance Adopting and Approving a Change in a Concept Development Plan in a Commercial Two/Planned Development (C-2/PD) Zone and Office One/Planned Development (O-1/PD) zone for a .9703 acre site located at 8747 U.S. 42, Florence, Kentucky, to modify a previous condition of approval regarding the location of a drive-through menu board sign. (Ken Butler/Jimmy Johns)

The effect of this Ordinance is to modify a previous condition of approval regarding the location of a drive-through menu board sign in a Commercial Two/Planned Development (C-2/PD) zone and Office One/Planned Development (O-1/PD) zone.

The full text of Ordinance O-12-21, including its exhibits, is available for examination in the office of the City Clerk of the City of Florence, Kentucky, in the Florence Government Center, 8100 Ewing Blvd., Florence, Kentucky, during regular office hours.

Mayor Whalen called for a motion to approve the second reading of Ordinance O-12-21. Councilmember Aubuchon motioned to approve, with a second from Councilmember Winn. Councilmember Huff stated he will abstain from the vote because he is an employee of Charter Spectrum Communications. Mayor Whalen requested a Roll Call Vote. Councilmember Carroll, yes; Councilmember Winn, yes; Councilmember Huff, abstention; Councilmember Aubuchon, yes; Councilmember Wingo, yes; Councilmember Osborne, yes. **Roll call recognized five yes votes, and one abstention, approving the second reading of Ordinance O-12-21.**

SECOND READING ORDINANCE O-13-21:

Mayor Whalen read Ordinance O-13-21. An Ordinance Adopting and Approving a Change in a Concept Development Plan in an Urban Residential Two/Commercial Two/Planned Development (UR-2/C-2/PD) Zone for an approximate 3.5 acre site located at 1200 Bill Wentz Drive, Florence, Kentucky, to allow an alternate buffer yard planting scheme in the north/northeast most part of the site. (Gunpowder Estates)

The effect of this Ordinance is to allow an alternate buffer yard planting scheme in the north/northeast most part of a 3.5 acre site in an Urban Residential Two/Commercial Two/Planned Development (UR-2/C-2/PD) zone.

The full text of Ordinance O-13-21 including its exhibits, is available for examination in the office of the City Clerk of the City of Florence, Kentucky, in the Florence Government Center, 8100 Ewing Blvd., Florence, Kentucky, during regular office hours.

Mayor Whalen called for a motion to approve the second reading of Ordinance O-13-21. Councilmember Aubuchon motioned to approve, with a second from Councilmember Huff. **All councilmembers present voted aye.**

SECOND READING ORDINANCE O-14-21:

Mayor Whalen read Ordinance O-14-21. An Ordinance Amending Ordinance O-9-06 and fixing the payment schedule for the offices of Mayor and Member of City Council.

This Ordinance fixes the payment schedule for the Office of Mayor and the Office of Member of City Council. The Mayor and Members of City Council shall be paid bi-weekly.

The full text of Ordinance No. O-14-21 is available for examination in the office of the City Clerk of the City of Florence, Kentucky, in the Florence Government Center, 8100 Ewing Blvd., Florence, Kentucky, during regular office hours.

Mayor Whalen called for a motion to approve the second reading of Ordinance O-14-21. Councilmember Osborne motioned to approve, with a second from Councilmember Wingo. **All councilmembers present voted aye.**

DISCUSSION AND POSSIBLE ACTION - MUNICIPAL ORDER MO-6-21:

Mayor Whalen advised that the Florence Appointee to the Boone County Planning Commission Lori Heilman resigned due to the time involved on the board and other obligations. Kenny Vaught previously served on the commission. Mr. Vaught has agreed to serve the remainder of Ms. Heilman's term if all councilmembers were in agreement. All councilmembers were in agreement and no further discussion was needed.

Mayor Whalen read Municipal Order MO-6-21. A Municipal Order approving the appointment of Kenny Vaught to the Boone County Planning Commission as an Appointee of the City of Florence, Kentucky to fill the unexpired term of Lori Heilman.

Mayor Whalen called for a motion to approve Municipal Order MO-6-21. Councilmember Carroll motioned to approve Municipal Order MO-6-21 with a second from Councilmember Aubuchon. **All councilmembers present voted aye.**

FORECLOSURE HEARING & CONSIDERATION OF RESOLUTION 001-2021 FROM THE FLORENCE CODE ENFORCEMENT BOARD:

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

Mr. Thomas Nienaber informed council the purpose of the hearing is to establish a record and act upon a recommendation for civil action initiated against 37 Grand Avenue, 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.

Mr. Nienaber stated under the city's code enforcement ordinance, the city council acts upon the recommendation of the Code Enforcement Board. On June 2, 2021, the Code Enforcement Board had a hearing. At the hearing, based upon the recommendation of Jeremy Kleier, the Code Enforcement Board made a recommendation to city council as to whether or not civil action should be initiated in order to address the code enforcement violations. 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 outstanding fines. As the Code Enforcement Board has criteria to follow, city council also has criteria which must be followed. Under the city's code enforcement ordinance, there are six elements which must be found to determine the course of action:

1. Whether or not the violator, Mr. Meagher, was given proper notice of the violations as required under the City of Florence Ordinance and by the Kentucky Revised Statutes.
2. Whether seeking civil action against the violator, Mr. Meagher, would be an appropriate course of action.
3. Whether or not, Mr. Meagher has demonstrated an indifference or disregard for the Code Enforcement Ordinances of the City of Florence.
4. Whether or not the violations in place constitute a danger to the health and welfare of residents in the vicinity.
5. Whether or not the condition of the property would materially interfere with the peaceful enjoyment of adjacent property owners.
6. Whether or not the violations have existed over a period of time and that there are at least three convictions of the same violation.

Mr. Nienaber informed councilmembers following the hearing they would be required to make Findings of Fact with respect to their final decision. Mr. Nienaber identified the exhibits provided to councilmembers and called the witness, Jeremy Kleier, Community Support Services Superintendent. Mayor Whalen swore in the witness, Jeremy Kleier.

Mr. Nienaber:	State your full name and position with the City of Florence.
Witness Kleier:	Jeremy Kleier, Community Support Services Superintendent.
Mr. Nienaber:	Did you have occasion to testify at a Code Enforcement Hearing on June 2, 2021?
Witness Kleier:	Yes, I did.
Mr. Nienaber:	And that was regarding the 37 Grand Avenue property that we are here for tonight?
Witness Kleier:	Correct.
Mr. Nienaber:	And that property is owned by Mr. Donald Meagher?
Witness Kleier:	Correct.

Mr. Nienaber: Exhibit "1", is that the notice sent to Mr. Meagher regarding this hearing tonight, correct?
Witness Kleier: That's correct.
Mr. Nienaber: He has been appropriately noticed pursuant to the statute in the city ordinance?
Witness Kleier: Yes.
Mr. Nienaber: Moving to Exhibit "2", is that a Memorandum from you to Eric Hall, is that correct?
Witness Kleier: That's correct, yes.
Mr. Nienaber: Dated May 5, 2021?
Witness Kleier: Yes.
Mr. Nienaber: What was the purpose of that Memorandum?
Witness Kleier: The purpose of it was to summarize the situation, the violations, the fines, and also make a recommendation that Code Enforcement Board consider recommending foreclosure on the property.
Mr. Nienaber: And did you present that Memorandum to the Code Enforcement Board?
Witness Kleier: Yes I did.
Mr. Nienaber: And what did the Code Enforcement Board do?
Witness Kleier: They voted unanimously to recommend foreclosure.
Mr. Nienaber: And attached to your Memorandum is a four page chart?
Witness Kleier: Yes.
Mr. Nienaber: And would you briefly describe to city council what that is.
Witness Kleier: This is a summary of all outstanding citations and the outstanding fines for this case dating back to September 2018.
Mr. Nienaber: I asked you to prepare a list of the actual liens that were filed as a result of some of the citations against 37 Grand Avenue.
Witness Kleier: Yes.
Mr. Nienaber: I would direct your attention to Exhibit "3", a two page list, is that correct?
Witness Kleier: Yes, that's correct.
Mr. Nienaber: And what is that list Jeremy?
Witness Kleier: This is a list of all the filed claims of lien with the county.
Mr. Nienaber: And these have all been appropriately filed in the Boone County Clerk's office?
Witness Kleier: That's correct.
Mr. Nienaber: And for example, the first one identified there it's got a date of March 25, 2019, that was when it was recorded?
Witness Kleier: Correct.
Mr. Nienaber: It's recorded in Encumbrance Book 163, page 642?
Witness Kleier: Correct.
Mr. Nienaber: And it's recorded in the Boone County Clerk's office?
Witness Kleier: Correct.
Mr. Nienaber: If I ask you with respect to each one of liens that were filed, that would be your testimony with the corresponding information that follows each lien.
Witness Kleier: Yes sir.

Mr. Nienaber: There were a total of 23 liens filed?
Witness Kleier: Yes.
Mr. Nienaber: Have any of those been satisfied?
Witness Kleier: No.
Mr. Nienaber: Are they still outstanding?
Witness Kleier: Yes they are.
Mr. Nienaber: And the violations still exist?
Witness Kleier: Correct.
Mr. Nienaber: And as of August 9, have you made an assessment in calculation of the outstanding liens, fines, and accumulated interest? As of August 9, 2021? That would be Exhibit "3" as well Jeremy.
Witness Kleier: That's correct. So the outstanding total is \$19,086.00.
Mr. Nienaber: That amount is due and owing?
Witness Kleier: Correct.
Mr. Nienaber: Moving to Exhibit "4" Jeremy, that is a Resolution from the Florence Code Enforcement Board, correct?
Witness Kleier: Yes.
Mr. Nienaber: And that was the Resolution which was passed after the Hearing on June 2, 2021?
Witness Kleier: That's correct.
Mr. Nienaber: Moving to Exhibit "5", that is a summary of the violations that have been assessed against 37 Grand Avenue for the period beginning September 14, 2018 through April 13, 2021?
Witness Kleier: Yes.
Mr. Nienaber: And those violations are still outstanding to the best of your knowledge?
Witness Kleier: That's correct, yes.
Mr. Nienaber: Has Mr. Meagher ever contacted you requesting time to correct these violations?
Witness Kleier: No.
Mr. Nienaber: Has he ever contacted you to pay these lien fines?
Witness Kleier: No.
Mr. Nienaber: Has he made any effort, with you, to take care of this situation which has existed?
Witness Kleier: No.
Mr. Nienaber: That's all I have with this witness.

Mr. Nienaber called the next witness, Fire Marshall Randy Childress. Mayor Whalen swore in Fire Marshal Childress.

Mr. Nienaber: Mr. Childress, would you state your full name please?
Witness Childress: Randy Childress, I am the Fire Marshall for the Florence Fire/EMS.
Mr. Nienaber: Have you had any contacts at 37 Grand Avenue?
Witness Childress: Yes I have.
Mr. Nienaber: Have you had any meetings with Mr. Meagher?
Witness Childress: One, yes.

- Mr. Nienaber: And approximately when was that meeting?
- Witness Childress: It would have been in early 2021, I believe March.
- Mr. Nienaber: You've received a packet of Exhibits, have you not?
- Witness Childress: I have.
- Mr. Nienaber: I would draw your attention to Exhibit 6. That is a letter dated June 15, 2018. Would you tell city council what that letter is?
- Witness Childress: This is a letter from my predecessor, Kevin Vogelpohl, citing due to a complaint in an annual inspection at 37 Grand, the violations that he found and citing the code that those violations are under.
- Mr. Nienaber: Are they violations that are cited in that June 15, 2018 letter, are those public health and safety issues?
- Witness Childress: They are.
- Mr. Nienaber: Have those been corrected to your knowledge?
- Witness Childress: They have not.
- Mr. Nienaber: And then moving to the Exhibit "7", there is a January 12, 2021 letter. Would you tell city council what that's about?
- Witness Childress: I performed an inspection at 37 Grand and gave the results to Mr. Meagher. Saw no change and after those inspections, this was a letter I wrote summarizing a timeline of how many times we have been to the property, the problems that were found at the property, and what action had been taken so far.
- Mr. Nienaber: Were the violations set forth in that January 12, 2021 inspection, were those public safety issues?
- Witness Childress: Yes they were.
- Mr. Nienaber: Have those been corrected to your knowledge?
- Witness Childress: No they have not.
- Mr. Nienaber: What was the report that you received that prompted you to visit 37 Grand Avenue?
- Witness Childress: My initial visit was from an anonymous complaint that Mr. Meagher had removed an apartment door to one of the apartments and left it open. I proceeded to the property and met with the resident there and indeed the apartment door was gone and was covered with a blanket. I found that and told them I would contact Mr. Meagher. I had a phone conversation with him and explained to him that he could not do that, that it was a fire code violation. He told me at that time, over the phone, that he wished to evict the people there. I instructed him there was a process for that and he would need to go through the process, but in the meantime, would need to replace that door. I proceeded back thirty days later and the residents had purchased their own door and replaced the door. At that time, that particular violation was found to be resolved, however, I also found in the basement that three apartments had been built and did not meet any code, no record of them ever being inspected or permitted. I pressed to Mr. Meagher that these apartments were not to be used in anyway shape or form in the residence. In the letter from Mr. Vogelpohl from 2018, he also directed that to him that those apartments were not to be used for any kind of occupant.
- Mr. Nienaber: The living conditions, could you briefly describe those in the garage area of the apartment buildings?
- Witness Childress: These were three relatively small apartments, no windows, only door in and door out. The only exit was through the hallway of the basement next to the electric panel. They had no running water, no sanitation, no permanent lighting, no means of heat, the

electric was ran, not according to code, there was foam board against the garage door, and most of the walls had been built, did not meet code.

Mr. Nienaber: And it was those are the conditions which prompted the meeting with Mr. Meagher and myself, correct?

Witness Childress: That's correct.

Mr. Nienaber: And since that meeting, have those issues been addressed and resolved?

Witness Childress: The bed has been removed and one outlet has been removed. The rest remain.

Mr. Nienaber: And all of those existing conditions are life safety and public health issues?

Witness Childress: They are.

Mr. Nienaber: That's all I have with this witness.

Mr. Nienaber identified the last exhibit, Exhibit "8", a title report which represents evidence which in fact Mr. Meagher owns the property. Mr. Nienaber introduced all of the liens filed against the property into record.

Mr. Nienaber introduced the following documents into record:

- Exhibit 1 – Notice of Hearing;
- Exhibit 2 – Jeremy Kleier May 5, 2021 Memorandum – Exhibit "2";
- Exhibit 3 – Lien Summary;
- Exhibit 4 – Code Enforcement Board Resolution;
- Exhibit 5 – Lien History with Cumulative Financial Summary;
- Exhibit 6 – Florence Fire Department Inspection History;
- Exhibit 7 – March 2, 2021 Agreement Summary;
- Exhibit 8 – Fred H. Summe Title Report;
- Liens filed in Boone County Clerk's Office against the property.

Mr. Nienaber had nothing further at that time.

Mayor Whalen called upon Donald Meagher to present his case.

Mr. Meagher stated, "He would like them to take a second look at the property, he had done quite a few things to it. And some of the citations are an overkill. But I would like for them to take a second look. We've even painted the building."

Mayor Whalen questioned whether he had anything he would like to present.

Mr. Meagher stated, "Another thing to is, I have a mailing address in Hebron, I was having problems over there getting my mail because of them raiding the mailboxes."

Mayor Whalen asked Mr. Meagher if he was duly notified of the hearings and he replied affirmatively.

Mr. Nienaber questioned Mr. Meagher:

Mr. Nienaber: Mr. Meagher, have you ever filed an appeal of any citation you received from the code enforcement officer?

Witness Meagher: No, I haven't.

Mr. Nienaber: Have you ever filed a written request for a hearing with the code enforcement board or any other agency?

Witness Meagher: No, I haven't.

Mayor Whalen swore the witness Mr. Meagher in.

Mr. Nienaber: You just answered a couple of questions and gave some testimony here, is the testimony you provided thus far, is that true and accurate?

Witness Meagher: Yes, sir.

Mr. Nienaber: And you make those statements under oath?

Witness Meagher: Yes, sir.

Mr. Nienaber: Have you ever filed an appeal?

Witness Meagher: No, I haven't.

Mr. Nienaber: Have you ever requested an appeal from the Code Enforcement Board any anybody else?

Witness Meagher: No, I never knew that was actually something I could do.

Mr. Nienaber: Have you ever tried to pay any of these liens off?

Witness Meagher: No, I haven't.

Mr. Nienaber: Have you ever contacted anybody from Code Enforcement to try and resolve these liens and the citations that serve as the basis for those fines?

Witness Meagher: Yes, years ago I was dealing with Dale Jensensky. Is he still with us?

Mr. Nienaber: But since 2018 you haven't have you?

Witness Meagher: No I have not.

Mr. Nienaber: And the property is still in violation as we sit here tonight?

Witness Meagher: Some of it maybe, yes sir.

Mr. Nienaber: So it is in violation?

Witness Meagher: Some of it, yes sir.

Mr. Nienaber: That's all I have Mayor.

Mayor Whalen asked Mr. Meagher if he had any further comments or questions.

Mr. Meagher stated, "With that many violations I need to do a walk through, hand in hand, see what, because some of it, it appears to me to be an overkill. The rear window on the building, was like that, I don't know how long before I ever bought it. And they said it needs a window put back in there. And they said something about a fire extinguisher and they put the notice of the conviction on the fire extinguisher. So that's just a couple of examples right there. But the big problem that we had was the pandemic and the tenants fighting amongst each other. That's what caused all the police and inspections, and on and on and on."

EXECUTIVE SESSION:

There being no further questions or comments, Mayor Whalen called for a motion to go into Executive Session pursuant to KRS 61.810 (1) (c) litigation, proposed or pending against or on behalf of the city. Councilmember Winn so moved with a second from Councilmember Huff. **All councilmembers present voted aye, the time being 6:59 p.m.**

Mayor Whalen called for a motion to come back into session after the Executive Session. Councilmember Aubuchon so moved, with a second from Councilmember Winn. **All councilmembers present voted aye, the time being 7:19 p.m.**

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 24, 2021, at 6:00 p.m., regarding Donald J. Meagher, 37 Grand Avenue, 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. Donald J. Meagher has received proper notice of all violations and hearings as required by Kentucky Revised Statutes and/or the City of Florence Code Enforcement Ordinance.
2. Donald J. Meagher has failed to comply with the City's Code Enforcement Ordinance regarding the condition of his real estate located at 37 Grand Avenue, Florence, Kentucky ("Property").
3. Donald J. Meagher has failed to comply with the terms and conditions of a certain Agreement dated March 2, 2021, in that he has failed to comply and/or correct various Fire Code Safety issues at the Property and has operated the Property in such a manner as to constitute a present danger and nuisance to the public at large and particularly to residents in or around the vicinity of 37 Grand Avenue, Florence, Kentucky.
4. There are current outstanding Code Enforcement Liens as identified in Exhibit "3" introduced into the hearing of this matter, a copy of which is incorporated herein.
5. In all, there have been in excess of 23 Citations issued against 37 Grand Avenue, Florence, Kentucky, for which Liens have been filed during the period beginning October 22, 2018 through April 13, 2021.
6. Donald J. Meagher has not taken reasonable steps to comply with the Code Enforcement Ordinance and he has demonstrated a continuous and flagrant refusal to comply by his conduct and/or inaction.
7. Donald J. Meagher has allowed 37 Grand Avenue, 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 and around the vicinity of 37 Grand Avenue, Florence, Kentucky.
8. Donald J. Meagher'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.

9. Donald J. Meagher has never filed a formal written appeal or request for hearing before the Code Enforcement Board.

10. Donald J. Meagher has received far in excess of 3 convictions of the same violations which have been found to exist for an extended period of time.

11. Filing a civil suit seeking monetary damages against Donald J. Meagher would be appropriate under the circumstances and the only course of reasonable 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 authorized and directed to immediately initiate a civil proceeding against Donald J. Meagher for the collection of all outstanding fines, penalties, interest, costs, attorney's fees, and any and all other charges which may now be due and owing, or hereafter become due and owing, 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; seek an Order and Judgment directing the sale of the property located at 37 Grand Avenue, Florence, Kentucky; and to seek any and all other relief as may be permitted and authorized under the Code Enforcement Ordinance and/or Kentucky Revised Statutes.

MUNICIPAL ORDER MO-8-21:

Mayor Whalen read Municipal Order MO-8-21. A Municipal Order authorizing and directing the city attorney to file suit seeking judgment for unpaid fines, fees, costs and expenses.

Mayor Whalen called for a motion to approve Municipal Order MO-8-21. Councilmember Huff motioned to approve Municipal Order MO-8-21 with a second from Councilmember Aubuchon. **All councilmembers present voted aye.**

FORECLOSURE HEARING & CONSIDERATION OF RESOLUTION NO. 002-2021 FROM THE FLORENCE CODE ENFORCEMENT BOARD:

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

Mr. Thomas Nienaber informed council the purpose of the hearing is to establish a record and act upon a recommendation for civil action initiated against Burger King, 7958 U.S. 42, Florence, Kentucky 41042 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.

Mr. Nienaber stated under the city's code enforcement ordinance, the city council acts upon the recommendation of the Code Enforcement Board. On June 2, 2021, the Code Enforcement Board had a hearing. At the hearing, based upon the recommendation of Jeremy Kleier, the Code Enforcement Board unanimously made a recommendation to city council as to whether or not civil

action should be initiated in order to address the code enforcement violations. Mr. Nienaber informed council that the amount of liens on the property are in excess of \$25,000. Burger King Corporation has refused to acknowledge any of the fines and violations against them. Under the city's code enforcement ordinance, the criteria to be met are the same six elements as the previous case.

Mr. Nienaber informed councilmembers following the hearing they would be required to make Findings of Fact with respect to their final decision. Mr. Nienaber identified the exhibits provided to councilmembers and called the witness, Jeremy Kleier, Community Support Services Superintendent. Mayor Whalen swore in the witness, Jeremy Kleier.

Mr. Nienaber: State your full name please.
Witness Kleier: Jeremy Kleier.
Mr. Nienaber: And you work for the city?
Witness Kleier: I do yes.
Mr. Nienaber: And your position?
Witness Kleier: Community Support Services Superintendent.
Mr. Nienaber: Did you have occasion to testify at a Code Enforcement Hearing on
June 2, 2021?
Witness Kleier: Yes, I did.
Mr. Nienaber: And that was regarding Burger King Corporation in Houston,
Texas?
Witness Kleier: Correct.
Mr. Nienaber: And this property is located at 7958 U.S. 42?
Witness Kleier: Yes.
Mr. Nienaber: Draw your attention to the Exhibit "1", is that the notice that was
sent to Burger King Corporation in this particular case?
Witness Kleier: Yes it is.
Mr. Nienaber: I would like to add for city council some time ago, it just seemed
odd to me, after month to month, week, that the citations kept being issued against Burger King,
and I'm thinking, maybe they are not getting these notices. They were sent as required by law to
the address on file at the PVA for tax billing purposes. They have paid all their taxes. They just
don't respond to these liens. Sometime ago, on my own, out of curiosity, I sent a letter to Burger
King Corporation, which is in Miami, Florida. That is where their national headquarters are, and I
sent a letter to the corporation, and I sent a letter to the legal department at Burger King
Corporation and emails. No response. For whatever reason, Burger King, is beyond me. I don't
get it. Jeremy, moving to Exhibit "2", will you tell city council what that is?
Witness Kleier: This is my memo summarizing the history of the violations, the
amount of liens and fines, and making my recommendation to the Code Enforcement Board that
they recommend foreclosure on the property.
Mr. Nienaber: And your recommendation considered the six elements as set forth
in your Memorandum dated May 17, 2021?
Witness Kleier: Yes.
Mr. Nienaber: And your testimony here tonight is that those conditions still exist?
Witness Kleier: Correct.
Mr. Nienaber: As they did on June 2, 2021 when you testified?

Witness Kleier: Yes.

Mr. Nienaber: Attached to your Memorandum is a summary, spreadsheet. Will you tell city council what that is?

Witness Kleier: Yes, it is a summary of all violations, with outstanding fines, dating back to May of 2011.

Mr. Nienaber: Is the city effectively taking care of this property in terms of cutting the grass, cleaning it up, keeping it half way decent?

Witness Kleier: Since the building was demolished, in I believe 2014, we have maintained the grass and cleaned up the trash multiple times.

Mr. Nienaber: Your summary of violations include the charges the city has made for those services?

Witness Kleier: Yes, that's correct.

Mr. Nienaber: Has Burger King Corporation ever reached out to you to try and resolve these matters?

Witness Kleier: Not once.

Mr. Nienaber: Have you ever received any notices or correspondence from Burger King Corporation?

Witness Kleier: No.

Mr. Nienaber: Pursuant to Exhibit "2", you have total amount due as of August 9, 2021, what is that?

Witness Kleier: Total amount is \$24,135.58.

Mr. Nienaber: And that includes fines, penalties, and charges for services that the city incurred as a result of cleaning the property up?

Witness Kleier: Correct.

Mr. Nienaber: Moving onto Exhibit "3", please tell city council what that list is?

Witness Kleier: Exhibit "3" is a list of all claims of liens that have been filed against Burger King in Boone County.

Mr. Nienaber: It starts out with May 31, 2017 and the last one was March 16, 2021.

Witness Kleier: Correct.

Mr. Nienaber: Does that exhibit accurately reflect the dates that those liens were filed and the Encumbrance Book and Page number of each lien?

Witness Kleier: Yes it does.

Mr. Nienaber: Those were all filed in the Boone County Clerk's office, is that correct?

Witness Kleier: Correct.

Mr. Nienaber: Moving to Exhibit "4" Jeremy, please tell city council what that is.

Witness Kleier: Exhibit "4" is a Resolution with the Code Enforcement Board, recommending foreclosure on the property.

Mr. Nienaber: And that was a unanimous decision?

Witness Kleier: Yes it was.

Mr. Nienaber: Did Burger King show up at that hearing on June 2?

Witness Kleier: No.

Mr. Nienaber: Did they file anything with your department or the Code Enforcement Board?

Witness Kleier: Nothing.

Mr. Nienaber: Exhibit "5", is a separate list of the fines, penalties, is that correct?

Witness Kleier: Yes.

Mr. Nienaber introduced Exhibit “6”, title report for the property which states and identifies the property owner as being Burger King Corporation, a Florida Corporation.

Mr. Nienaber introduced the following documents into record:

- Exhibit 1 – Notice of Hearing;
- Exhibit 2 – Jeremy Kleier May 17, 2021 Memorandum;
- Exhibit 3 – Lien Summary;
- Exhibit 4 – Code Enforcement Board Resolution;
- Exhibit 5 – Lien History with Cumulative Financial Summary;
- Exhibit 6 – Fred H. Summe Title Report;
- Liens filed in Boone County Clerk’s Office against the property.

No representative appeared on behalf of Burger King Corporation.

EXECUTIVE SESSION:

There being no further questions or comments, Mayor Whalen called for a motion to go into Executive Session pursuant to KRS 61.810 (1) (c) litigation, proposed or pending against or on behalf of the city. Councilmember Winn so moved with a second from Councilmember Huff. **All councilmembers present voted aye, the time being 7:32 p.m.**

Mayor Whalen called for a motion to come back into session after the Executive Session. Councilmember Winn so moved, with a second from Councilmember Osborne. **All councilmembers present voted aye, the time being 7:46 p.m.**

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 24, 2021, at 6:00 p.m., regarding Burger King Corporation, 7958 US 42, and Florence, KY, 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. Burger King Corporation has received proper notice of all violations and hearings as required by the City of Florence Code Enforcement Ordinance.
2. Burger King Corporation has failed to comply with the City’s Code Enforcement Ordinance regarding the condition of its real estate located at 7958 US 42, Florence, Kentucky (“Property”).
3. There are current outstanding Code Enforcement Liens as identified in Exhibit “3” introduced into the hearing of this matter, a copy of which is incorporated herein.

4. In all, there have been in excess of 35 Citations issued against 7958 US 42, Florence, Kentucky, for which Liens have been filed which were issued for the period beginning May 26, 2011 through May 26, 2021.

5. Burger King Corporation has not taken reasonable steps to comply with the Code Enforcement Ordinance and has demonstrated a continuous and flagrant refusal to comply by their conduct and inaction.

6. Burger King Corporation has allowed 7958 US 42, 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 and adjacent to 7958 US 42, Florence, Kentucky.

7. Burger King Corporation's disregard of and refusal to comply with the Code Enforcement Ordinance has persisted over an extended period of time. They have shown no indication that they will ever attempt to reasonably comply with the Code Enforcement Ordinance.

8. Burger King Corporation has never filed a formal written appeal or request for hearing before the Code Enforcement Board.

9. Burger King Corporation 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 monetary damages against Burger King Corporation would be appropriate under the circumstances and the only course of reasonable 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 authorized and directed to immediately initiate a civil proceeding against Burger King Corporation for the collection of all outstanding fines, penalties, interest, costs, attorney's fees, and any and all other charges which may now be due and owing, or hereafter become due and owing, 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; seek an Order and Judgment directing the sale of the property located at 7958 US 42, Florence, Kentucky; and to seek any and all other relief as may be permitted and authorized under the Code Enforcement Ordinance and/or Kentucky Revised Statutes.

MUNICIPAL ORDER MO-7-21:

Mayor Whalen read Municipal Order MO-7-21. A Municipal Order authorizing and directing the city attorney to file suit seeking judgment for unpaid fines, fees, costs and expenses.

Mayor Whalen called for a motion to approve Municipal Order MO-7-21. Councilmember Winn motioned to approve Municipal Order MO-7-21 with a second from Councilmember Huff. **All councilmembers present voted aye.**

MAYOR'S REPORT:

- Mayor Whalen informed everyone there will be no city council meeting next Tuesday, August 31 as it is a 5th Tuesday. The next regularly scheduled City Council Meeting will be Tuesday, September 7.
- City offices will be closed Monday, September 6, in observance of Labor Day.
- The 34th Annual Boone County Senior Picnic is scheduled for Wednesday, September 8, 2021 from 9:00 a.m. to 2:00 p.m. at the Boone County Fairgrounds. Tickets are available for purchase at the Finance Counter in the Florence Government Center, as well as, the Boone County Fiscal Court Offices, City of Union, and the City of Walton.
- The city will be hosting their Annual Pooch Fest on Saturday, September 11, 2021, at the Florence Senior Activity Center. Registration begins at 10:00 a.m. Additional information is available on our website.
- In conjunction with the Boone County Fiscal Court and the Florence Y'all's Baseball Team, the City of Florence will be hosting a Patriot Day Remembrance, commemorating the 20th anniversary of 9/11, on Saturday, September 11, 2021 at 5:00 p.m. The Event will be held at the Florence Y'all's Stadium. The program will feature patriotic performances by the Northern Kentucky Brotherhood Singers, recognition of Boone County's First Responders, baseball game with the Florence Y'all's, view a piece of the structural steel from the Twin Towers Building, pictorial timeline of the 9/11 events, fireworks after the game, as well as, a musical performance by Cassette Junkies Band. Tickets will be made available to first responders. In addition, the event will be collecting donations for Go Pantry. Go Pantry is requesting donations of canned goods including spaghetti, ravioli, and fruit cups.
- Mayor Whalen informed everyone the Aquatic Center Recreation Survey was delivered to the post office yesterday, August 23. Surveys were sent to all city residents and businesses who pay water bills in the City of Florence. Any taxpayer who does not receive a survey can come to the Florence Government Center to request a provisional copy. Completed surveys must be sent back no later than Friday, September 24 to be considered valid.

RECOGNITION:

Mayor Whalen asked if any of the following desired recognition:

Members of City Council:

Councilmember Aubuchon inquired with regard to the rental of parks and shelters usage. Public Services Director, Eric Hall, stated the usage has increased and bookings are continuing.

Councilmember Carroll inquired with regard to an ongoing status of the rentals and usage. Mr. Hall stated the Public Services Department Monthly Report has those statistics in the report specific to each facility.

Councilmember Wingo asked whether the Florence Main Street District Open House would still be held at the Florence Nature Park from 5:00-7:00 p.m. Mayor Whalen replied affirmatively.

Department Heads:

Fire/EMS Chief, Rodney Wren:

Chief Wren 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.

Audience:

City of Florence resident, Brian Kinross of 1736 Savannah Lakes Drive stated the following:

Mr. Kinross provided a display in which he disagreed with the statistics of the pool usage and felt more Florence residents use the pool. He also disagreed with the information provided by the Finance Department and stated utilizing his calculation their numbers are inaccurate. Mr. Kinross also believed the year in which the liner was replaced should be removed as consideration for part of the loss. However, he expressed his appreciation for the surveys and was happy to see water in the pool.

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 8:01 p.m.

APPROVED:

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

ATTEST:

/s/ Melissa Kramer
Melissa Kramer, City Clerk

