



City of Atlantic Beach

Agenda

Code Enforcement Special Magistrate Meeting

Wednesday, February 16, 2022 - 1:00 p.m.

Commission Chamber

City Hall, 800 Seminole Road

Page(s)

1. CALL TO ORDER

2. ADMINISTRATION OF OATH

3. RECORD EVIDENCE

4. OLD BUSINESS

4.A. **CASE#:** 21-087

3 - 11

NAME: Bourdon Thomas Patrick*

ADDRESS: 342 19th Street

[CE 342 19th St. Request for Rehearing](#)

5. ADJOURNMENT

* Homesteaded Properties

This meeting will be live-streamed and videotaped. To access live or recorded videos, click on the [Meeting Videos tab](#) on the city's home page at www.coab.us.

Any person wishing to speak to the City Commission on any matter at this meeting should submit a request to the City Clerk. For your convenience, forms for this purpose are available at the entrance to the Commission Chamber.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office by 5:00 PM, the Friday prior to the meeting.

If any person decides to appeal any decision made by the Code Enforcement Special Magistrate with respect to any matter considered at any meeting, such person may need a record of the proceedings, and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26 of the Florida Statutes, persons with disabilities needing special accommodation to participate in this

342 19th Street Rehearing Request

meeting should contact the City Clerk's Office not less than three (3) days prior to the date of this meeting at (904) 247-5800 or 800 Seminole Road.

From: Karl J. Sanders <kjsanders@kjslawpa.com>
Sent: Monday, February 7, 2022 6:31 PM
To: Donna Bartle <dbartle@coab.us>; Kim Flower <kflower@coab.us>
Cc: Suzanne Green <suzannegreenpa@gmail.com>; Brenna Durden <bdurden@llw-law.com>
Subject: Request for Rehearing -- Code Enforcement Special Magistrate Order (Case No. 21-087)

External Email

Attached for filing with the City and consideration by the Special Magistrate is Respondent's Request for Rehearing of the Order dated January 27, 2022, issued in connection with the above-styled code enforcement proceeding.

As more fully set forth in the attached Request, Respondent respectfully requests that the Special Magistrate vacate the Order so that this request can be set for rehearing at the next scheduled hearing on March 3, 2022; alternatively, Respondent requests that an earlier hearing date be scheduled for disposition of this request, as – per Section 2-148 of the City's Ordinance Code – the filing of this Request does not automatically toll the time for filing an appeal of said order (and the 30-day window for filing an appeal will expire on Monday, February 28, 2022).

I thank you in advance for your attention to and consideration of this Request.

Best regards,

Karl



Karl J. Sanders, Esq.
kjsanders@kjslawpa.com

[904.868.7929](tel:904.868.7929) | Office
[561.386.1216](tel:561.386.1216) | Mobile

CODE ENFORCEMENT PROCEEDING
BEFORE THE CITY OF ATLANTIC
BEACH SPECIAL MAGISTRATE

CASE NO.: 21-087
PARCEL ID NO: 172020-1242
ADDRESS: 342 19TH St.,
Atlantic Beach, FL

CITY OF ATLANTIC BEACH,
a municipal corporation,

Petitioner,

vs.

THOMAS BOURDON,

Respondent.

RESPONDENT'S REQUEST FOR REHEARING

Respondent, Thomas Bourdon, hereby files this Request for Rehearing of the Special Magistrate's Order on Case No. 21-087, dated January 27, 2022 (the "Order"). In support of this Request, Respondent states as follows:

1. Per Section 2-148 of the Ordinance Code for the City of Atlantic Beach (the "City"), a Request for Rehearing of a Special Magistrate's Order in a code enforcement proceeding initiated by the City may be filed with the city clerk's office within ten days of the execution of the order to be appealed.
2. Once filed, a Request for Rehearing shall be scheduled for the next available hearing date by the Special Magistrate.
3. Respondent respectfully submits that the above-referenced Order should be immediately vacated and scheduled for rehearing at the next available hearing date, as:

a. There exists new and material evidence which, if introduced at the hearing, would allegedly have changed the Special Magistrate's decision and could not with reasonable diligence have been discovered before and produced at the initial hearing; and

b. Given this evidence, the Order issued is contrary to the law and evidence previously presented for the Special Magistrate's consideration in resolving the issues at hand.

4. In particular, new and material evidence has been discovered which directly contradicts the new testimony and new legal arguments presented by the City at the code enforcement hearing on January 6, 2022, with respect to the issues of (1) whether Respondent's building permit activities constituted "development" as that term is defined by the City's Tree Ordinance, and (2) whether Section 163.045, Fla. Stat., preempts the City's prior authority to regulate matters relating to trees located on residential properties.

5. Contrary to the City's new testimony at the hearing on January 6, 2022, the City's Ordinance Code does, in fact, *require* a site plan "for all development and redevelopment." See Sec. 24-69, City Ord. Code., attached hereto.

6. Contrary to the City's new legal position and new legal arguments presented at the hearing on January 6, 2022, the City – through its elected City Commissioners – has previously declared – by way of a written Resolution adopted on February 8, 2021 (subsequent to Respondent's removal of trees from his residential property) – that Section 163.045 does, in fact, preempt "local regulation affecting trees located on residential properties." See Resolution No. 21-08, attached hereto.

WHEREFORE, Respondent respectfully requests that the Special Magistrate vacate the above-referenced Order and scheduled this matter for rehearing.

Respectfully submitted on this 7th day of February, 2022.

KJS LAW, P.A.

By: /s/ Karl J. Sanders
KARL J. SANDERS, ESQ.
Florida Bar No. 28452
1102 A1A N., Suite 203
Ponte Vedra Beach, FL 33401
Telephone: 904-868-7929
Email: kjsanders@kjslawpa.com

Attorney for Respondent

RESOLUTION NO. 21-08

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, SUPPORTING FLORIDA SENATE BILL 596 AND COMPANION HOUSE BILL 6023, WHICH WOULD REPEAL FLORIDA STATUTE 163.045 TO ENABLE LOCAL GOVERNMENTS TO REGULATE MATTERS RELATING TO TREES LOCATED ON RESIDENTIAL PROPERTIES; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Senator Linda Stewart and Representative Anna V. Eskamani are leading the effort to repeal a state preemption of local ordinances related to trees located on residential properties; and

WHEREAS, Senator Stewart's Senate Bill 596 and Representative Eskamani's House Bill 6023 would repeal Section 163.045, Florida Statutes, and restore the rights of local governments related to pruning, trimming, or removal of trees on residential property; and

WHEREAS, Section 163.045, adopted by the Florida Legislature in 2019, advocated a way to protect residential property owners' rights, and arose after local controversies occurred in several places in the state related to removal and trimming of trees; and

WHEREAS, the City of Atlantic Beach and many other Florida communities utilize tree-protection codes to define their communities' character and standards of life, and local governments should be restored local controls to protect these invaluable natural resources; and

WHEREAS, local county and city governments are more closely connected to their residents' wishes and needs than the state government, and as such, should be restored the ability to adopt regulations that reflect the values of their respective communities and the desires of their residents; and

WHEREAS, the City of Atlantic Beach seeks to preserve and protect home rule authority for Atlantic Beach and local governments.

NOW THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach, Florida:

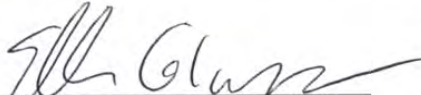
SECTION 1. That the City Commission of the City of Atlantic Beach supports Senate Bill 596 and House Bill 6023, which would repeal Section 163.045, Florida Statutes, preempting local regulation affecting trees located on residential properties.

SECTION 2. That the City Commission directs the City Clerk to transmit a copy of this Resolution to the Florida Governor, the City of Jacksonville, the Florida League of Cities, and the Duval County delegation of the Florida Legislature, for distribution.

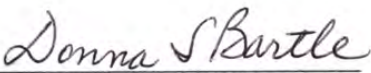
SECTION 3. That all resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Commission of the City of Atlantic Beach, this 8th day of February, 2021.


Ellen Glasser, Mayor

Attest:


Donna L. Bartle, City Clerk

Approved as to form and correctness:


Brenna M. Durd, City Attorney

Sec. 24-69. - Development review and issuance of development permits.

- (a) **Purpose.** The purpose of this section shall be to establish procedures for the submittal, review and approval of construction plans, and the issuance of development permits.
- (b) **Procedures.** Plans prepared according to the requirements set forth within this section shall be submitted to the building department for distribution, review and comment from appropriate departments of the city. Plans may be denied if they do not meet the intent or the requirements of this section and this chapter and the Florida Building Code.
- (c) **Site development plan required.** A site development plan, drawn at a clear and legible scale, shall be required for all development and redevelopment, other than interior renovations and fences, in accordance with the following provisions:
 - (1) Single-family, two-family (duplex) or two-unit townhouse and exterior structural alterations or additions thereto, including swimming pools and accessory structures. A certified survey and site development plan accompanied by the required application form and review fee as established by the city commission shall be submitted to the building department. Each of the following items shall be addressed:
 - a. All driveways and parking.
 - b. All existing and proposed structures.
 - c. Setbacks, any platted building restriction lines and height of buildings.
 - d. Any jurisdictional wetlands or coastal construction control line, water bodies, any required buffers or significant environmental features.
 - e. A pre-construction topographical survey.
 - f. A summary table showing proposed impervious surface area, including all structures, walkways, driveways, parking and equipment pads and any other surface defined as impervious in section 24-17 and conceptual stormwater requirements in accordance with section 24-68.
 - g. Other information as may be appropriate for the purposes of preliminary review.
 - (2) Multi-family, commercial and industrial uses and exterior structural alterations or additions thereto. A certified survey and preliminary site development plan accompanied by the required application form and review fee as established by the city commission shall be submitted the building department. The site development plan shall depict the entire tract proposed for development and shall be drawn at a scale sufficient to depict all required information in a clear and legible manner. Each of the following items shall be provided as appropriate to the project and as further set forth within the application for a particular form of development permit as provided by the building official:

- a. Project boundary with bearings and distances.
 - b. Legal description, including property size.
 - c. Location of all structures, temporary and permanent, including setbacks, building height, number of stories and square footage (identify any existing structures and uses).
 - d. Project layout, including roadways, any easements, parking areas, driveway connections, sidewalks, vehicular and pedestrian circulation.
 - e. Existing driveways and roadways within three hundred (300) feet of project boundary.
 - f. Existing and proposed right-of-way improvements.
 - g. Conceptual stormwater management plan addressing drainage patterns, retention/detention areas, provisions for utilities, including a pre-construction topographical survey, pursuant to section 24-68.
 - h. Environmental features, including any jurisdictional wetlands, CCCL, natural water bodies, open space, buffers and vegetation preservation areas. For projects not meeting the thresholds requiring an environmental resource permit from the St. John's River Water Management District, provide conceptual plans showing how project intends to meet the stormwater retention and treatment requirements of section 24-68.
 - i. General notes shall include: total project area; impervious surface area; building square footage separated by type of use(s) if applicable; parking calculations; project phasing; zoning district classification and any conditions or restrictions.
 - j. Other information as may be appropriate for the purposes of preliminary review.
- (d) *Review and approval of development permit applications.* An application for a development permit shall include a development plan (consisting of the items described in section 24-69(c) above) and all required information including construction plans that demonstrate compliance with all applicable federal, state, and local land development regulations and permitting requirements. Completed applications shall be submitted to the building department for distribution and reviewed by the appropriate city departments. Upon approval of construction plans and development plans by reviewing departments and payment of required fees, development permits may be issued, and construction plans shall be released for construction.
- (e) *[Failure to respond.]* In the case that an applicant fails to make a good faith effort to timely respond to requests for additional information after any application for a development permit is submitted, plans shall remain valid for a period of six (6) months, after the date of latest

comments by the city, after which time new plans and a new review fee shall be required.

- (f) *Expiration of approved of construction plans.* Approved construction plans shall be claimed within ninety (90) days of notice of approval or completed comments, or said plans shall be considered to have expired. Upon expiration, a new submittal and review with applicable fees shall be required. Development review comments shall expire six (6) months from the date that comments are provided to the applicant.
- (g) *Expiration of development permits.* Development permits shall expire on the six-month anniversary of the date such permits were issued unless development has commenced and continued in good faith. Commencement shall mean the issuance of a valid building permit and the development permit shall remain active along with the building permit. Failure to maintain an active building permit will cause the development permit to expire.
- (h) *Retention of expired plans.* Any construction plans and supporting documents which have expired shall be discarded following effort to notify the applicant by the building department. It shall not be the responsibility of the city to store or retain expired construction plans.
- (i) *Changes to approved plans.* Applicants must submit to the city any and all proposed changes to approved plans including, but not limited to, changes required by other regulatory agencies such as the St. John's River Water Management District, Florida Department of Environmental Protection or Florida Department of Transportation. Failure to provide changes to the city for review may result in a stop work order being issued if construction deviates from the approved plans on file with the city.

(Ord. No. 90-10-212, § 2(Exh. A), 3-8-10; Ord. No. 90-19-240, § 3(Exh. A), 7-8-19)