

**CITY CLERK'S OFFICE**

**Municipal Code Enforcement Hearing**

City of Tampa

Petitioner,

Case No. COD-

vs.

Respondent.

**CODE ENFORCEMENT MAGISTRATE'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

THIS CAUSE came for public hearings before the Code Enforcement Special Magistrate completed on **July 24, 2020**. Having heard testimony under oath, and having received evidence and heard arguments from both Petitioner and Respondent, the Special Magistrate hereupon issues the following Findings of Fact, Conclusions of Law, and Orders:

**FINDINGS OF FACT**

1. That as agent to the property owner, removed twenty-seven (27) trees from property located at Florida (the "Property").
2. That removed one (1) tree from the City's right-of-way.
3. That of the total of twenty-eight (28) trees removed, twenty (20) were protected trees and eight (8) were grand trees as the terms "protected" and "grand" are defined in the Code ("Code").
4. That the Respondent did not obtain permits from the City as provided for in the Code for the removal of the twenty-eight (28) trees.

clearly non-conforming with the City's current codes and zoning. As provided in the record, the City's Code provides for a process by which a property owner may seek to establish a "legal non-conforming use" designation through an application process. There is no evidence in the record that demonstrates that the property owner ever pursued the "legal non-conforming use" application that might have resulted in the recognition in some manner of the "Trailer Facility". In fact there is nothing in the record that suggests the Property Owner intended to claim some right or manifested an intent to claim some legal non-conforming residential status for the "Trailer Facility" for which the residential status is claimed. The record demonstrates that the Property owners intent was to redevelop the property. The Trailer Facility was in the process of being abandoned (with a number of writs of possession issued by the Courts) and the property was eventually cleared of the trees and trailers. It is obvious that the Trailer Facility continued to operate in some manner after the property was zoned CG. However the fact that the City apparently failed to more aggressively pursue the Property Owner's compliance with the City's zoning code, does not justify allowing the Property Owner to obtain the broad rights to remove mature trees pursuant to Florida Statute 163.045, just because some individuals sheltered in some old trailers until such time they would be directed to leave by a Court Writ of Possession or eventually by the Property Owner, when the trailers were eventually demolished.

3. That [REDACTED] Code Section 27-284.2 requires any owner or authorized agent who intends to remove any protected or grand tree to obtain a permit.

4. That [REDACTED] Code Section 27-284.2.4 requires an application for protected tree removal.

5. That [REDACTED] Code Section 27-284.2.5 requires an application for grand tree removal.

6. That the Code sections described herein may be found in their entirety in the [REDACTED] CODE OF ORDINANCES.

7. That by failing to obtain a permit(s) to remove twenty (20) protected trees, Respondent has violated [REDACTED] Code Sections 27-284.2 and 27-284.2.4.

8. That by failing to obtain a permit(s) to remove eight (8) grand trees, Respondent has violated [REDACTED] Code Section 27.284.2 and 27-284.2.5.

5. That the Property is zoned Commercial General (“CG”).
6. That the Property has been in use as some type of “Trailer Facility” since 1946.
7. That at the time of the tree removal, the Property was not operating as a “Mobile Home Park” pursuant to the Code, given the Property is not located within a designated area for such use or certified by the State of Florida, Department of Health.
8. That at the time of the tree removal, the City did not recognize the Trailer Facility as a legal non-conforming use and there is nothing in the record documenting that the property owner claimed some right or manifested an intent to claim some legal non-conforming residential status for the Trailer Facility.
9. The Property owner filed an application to rezone the Property in 2018, between 2018 and 2019 sixteen (16) writs of possession were issued by the Court for various trailers located on the Property, and at the time of the hearing the Property was vacant and fenced.

#### **CONCLUSIONS OF LAW**

1. As acknowledge by the Respondent, a protected tree was removed from the City’s right-of-way and therefore was removed in violation of [REDACTED] Code Sections 27-284.2 and 27-284.2.4. Further, given the Respondent’s property was not “residential property” pursuant to the provisions of Florida Statute Section 163.045 (1) at the time the 19 protected trees and 8 grand trees were removed, the Respondent can not avail itself of the provisions of Florida Statute Section 163.045(1) and therefore the 27 trees were removed in violation of [REDACTED] Code Sections 27-284.2, 27-284.2.4, and 27-284.2.5. Although the Magistrate agrees with the Respondents regarding the plain meaning of the term “residential”, the fact that someone physically resides in a particular location cannot solely be determinative of whether a particular property is “residential property”. Otherwise, an individual could simply take up residence in commercial/office/industrial zoned property and claim that the provisions for Florida Statute Section 163.045(1) apply to the property.

2. Based on the evidence- there was clearly a “Trailer Facility” located on the Property since 1946. In 1946 the Property was granted some type of certificate for a tourist campground. The Property is currently zoned Commercial General (CG”). In order to operate a Mobile Home Park, the City’s Code designates certain areas within the City for Mobile Home Parks and must be certified by the State of Florida, Department of Health. The Property is neither in the designated area or certified by the State of Florida. Department of Health as a Mobile Home Park. Obviously, trailers were located on the Property since 1946 and there were apparently individuals sheltering in some manner within a few of the remaining dilapidated trailers in 2019. The “Trailer Facility” use was

**ORDER**

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The amount of the fine to be imposed for the violations listed herein shall be considered at the hearing scheduled for October 9, 2020.

  
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Code Enforcement Magistrate