



**SPECIAL MEETING OF
THE BOARD OF ADJUSTMENTS
VIRTUAL MEETING**

**<https://us02web.zoom.us/j/85895331569>
MINUTES**

**Tuesday, July 14, 2020
6:30 p.m.**

City of Margate
Municipal Building

City Commission

Mayor Tommy Ruzzano
Vice Mayor Arlene R. Schwartz
Antonio V. Arserio
Anthony N. Caggiano
Joanne Simone

City Manager

Cale Curtis

City Attorney

Janette M. Smith, Esq.

City Clerk

Joseph J. Kavanagh

PRESENT:

Chair Chad Dangervil
Vice Chair Karl Artner
Secretary Julianne Lore
Eddie DeCristofaro
Assia Zoubiri

ALSO PRESENT:

Janette M. Smith, City Attorney
Liz Taschereau, Development Services Director
Andrew Pinney, Senior Planner
Alexia Howald, Associate Planner
Melissa Miller, Office Manager and Board Liaison

A special meeting of the Board of Adjustments (BOA) of the City of Margate, having been properly noticed, was called to order at 6:42 p.m. on Tuesday, July 14, 2020, in the City Commission Chambers at City Hall, 5790 Margate Boulevard, Margate, FL 33063. Board Liaison Melissa Miller read a statement pertaining to the City's virtual public meeting pursuant to the Sunshine Law and the Governor's Executive Orders followed by roll call of the board members. The Pledge of Allegiance was recited followed by a swearing in and roll call of the Board members.

1) APPROVAL OF MINUTES

- A) *ID2020-227*
APPROVAL OF MINUTES FROM THE BOARD OF
ADJUSTMENT MEETINGS ON DECEMBER 3, 2019 AND
FEBRUARY 4, 2020.

Mr. DeCristofaro made the following motion, seconded by Ms. Zoubiri:

Development Services Department

901 NW 66th Avenue, Suite C, Margate, FL 33063 • Phone: (954) 979-6213
www.margatefl.com • dsd@margatefl.com

MOTION: TO APPROVE THE MINUTES FROM THE BOARD OF ADJUSTMENT MEETINGS ON DECEMBER 3, 2019 AND FEBRUARY 4, 2020.

ROLL CALL: Mr. Dangervil – Yes; Mr. Artner – Yes; Ms. Lore – Yes; Mr. DeCristofaro – Yes; Ms. Zoubiri – Yes. The motion passed with a 5-0 vote.

2) NEW BUSINESS

- A) *ID2020-253*
BA-02-20 APPEAL OF ADMINISTRATIVE ORDER OF THE DEPARTMENT OF ENVIRONMENTAL AND ENGINEERING SERVICES PROVIDED IN TREE REMOVAL PERMIT #19-00200205

Janette M. Smith, City Attorney, introduced the item and explained the Quasi-Judicial procedure to be followed for the hearing. She called for ex-parte communication from the Board and none was disclosed.

Melissa Miller, Board Liaison, swore in those wishing to speak on the matter, including Eric Pierce, Owner/Operator of Culver's Margate; Curt Keyser, DEES Director; Andrew Pinney, Senior Planner; and Richard Zucchini.

City Attorney Smith explained the case was an appeal from Section 23.27 of the City Code of Ordinances.

Mr. DeCristofaro made the following motion, seconded by Ms. Zoubiri:

MOTION: TO OPEN THE QUASI-JUDICIAL HEARING OF BA-02-20 APPEAL OF ADMINISTRATIVE ORDER OF THE DEPARTMENT OF ENVIRONMENTAL AND ENGINEERING SERVICES PROVIDED IN TREE REMOVAL PERMIT #19-00200205.

ROLL CALL: Mr. Dangervil – Yes; Mr. Artner – Yes; Ms. Lore – Yes; Mr. DeCristofaro – Yes; Ms. Zoubiri – Yes. The motion passed with a 5-0 vote.

Curt Keyser, DEES Director, made a presentation on behalf of staff. He provided a brief background, including the definition of specimen trees and exceptions, as well as the restrictions in the Code related to relocation of trees. He noted the Code required the appraisal of trees for removal or relocation be made by DEES and made no allowance for competitive appraisals by other entities.

Mr. Keyser provided images of the location and the trees on the site in 2017, 2018, and 2019, and explained drainage improvement made following the 2019 photograph in response to flooding on the adjacent Wawa property and prior to the current owner's purchase of the property in September 2019. Mr. Keyser reviewed the tree placement plan for the Wawa property, explaining 27 of the trees in the plan were off-site and located on the Culver's property. He stated 24 of the 27 trees were being removed in the current plan for the location and asserted this was appropriate if mitigated properly.

Continuing, Mr. Keyser shared excerpts of the tree appraisal completed by DEES on December 9, 2019, showing tree number 26 was valued at \$104,375; tree eight (8) was valued at \$6,157, tree 29 was valued at \$37,847, and tree 31 was valued at \$5,575. He noted a credit of \$33,200 which was applied as a result of other plants within the landscape plan, which resulted in a net of \$120,754. Mr. Keyser showed excerpts from an appraisal completed by an independent arborist the applicant had hired, which valued tree 26 at \$139,500. He noted a second independent appraisal was completed well into construction, on April 15, 2020, which assessed only tree 26 and valued it at \$29,930. He reiterated that the only appraisal recognized by City Code was the DEES appraisal.

Mr. Keyser showed a Guaranty and Replacement Agreement offered by the applicant to move the application forward. He stated the document acknowledges the need for mitigation and allows construction to move forward while the details of mitigation are worked out. Mr. Keyser pointed out that on page two (2), the document stated Culver's entered the agreement "knowingly and voluntarily" entered the agreement in consideration of the issue of permits. He noted the agreement was presented by the applicant and included seven (7) options for mitigation of the trees. He reviewed the options briefly and continued to discuss the document.

Mr. Keyser stated in the applicant's write-up, the applicant had stated their preference was to pursue option seven (7), as follows:

*Apply for and obtain a variance for the preservation of tree #26 (57" swamp mahogany).
Sec. 23-27, "Preservation as grounds for variance; appeals from administrative decisions."*

Mr. Keyser noted despite what was written, this was not the option being pursued, because at this time, tree 26 has been removed. He stated it was cut down, as was the case with all four (4) specimen trees. He explained because of this fact, the only options available from the seven (7) potential solutions in the agreement were as follows:

Pay the full balance (\$120,754.00) of the specimen tree appraised value to the City's Tree Preservation Account [Sec. 23-20(I)]; or

Plant 161 Category 1 trees (based on \$750 per tree) within the municipality [Sec. 23-20(I)]

Mr. Keyser pointed out that filing an appeal of the Landscape Code was not among the options included in the Guaranty and Replacement Agreement. Continuing, he reviewed the obligations

clause in the agreement, which states, "Culver's promises to fulfill all obligations under this agreement," and the default clause, as follows:

Default. *Either of the following constitutes a default under this guaranty:*

(a) the failure of Culver's to perform any of its obligations under this guaranty; or

(b) the commencement of any bankruptcy, insolvency, agreement, reorganization, or other debtor's relief policy by Culver's under any federal or state law, whether now existing or enacted hereafter.

Mr. Keyser noted at this point, the applicant has executed this agreement, obtained all permits, is well into and almost through construction, and has gotten all of the benefit out of the agreement and was present at this meeting to negotiate away the City's benefit and the benefit of the City's residents from the agreement. He asserted as far as he could see, the transaction being discussed was a one (1) sided deal. Mr. Keyser shared photos of tree 26 taken in October. He stated the tree was healthy prior to issuance of the permits, and the construction plan included protection of the tree and its roots. He shared a second photo of the tree in April and asserted at that time the protection was trampled, but had it been replaced and had the project abided by City, County, and State Code, the tree would have continued to stay in better condition than it did throughout construction. He shared additional photos of rubble surrounding the tree and stated this was the state of the tree throughout construction.

Continuing, Mr. Keyser stated the applicant had not identified the specific relief sought. He stated in reviewing the application, it appeared complete relief was requested from planting or payment. Mr. Keyser reviewed an email sent to Alexia Howald, Associate Planner, on June 23, 2020. He highlighted the following:

"At that time it was determined tree #26 had a value of \$120,754.00. It was later downgraded in value by the City DEES to \$47,000.00."

Mr. Keyser argued neither amount was correct and stated one (1) assessment and one (1) appraisal of the tree had been completed by DEES and the assessed value had never been downgraded or deviated. Continuing, he highlighted the following:

"The Guaranty and Replacement Agreement (pg. 3, point 1) provides for us the option to apply for and obtain a variance and subsequent waiver to the associated fee for preservation of tree #26 (57" Swamp Mahogany). This document shall serve to obtain such variance."

Mr. Keyser stated a remedy indicated in the agreement was for a variance, but the variance was for the preservation of tree 26. He continued reviewing the letter and stated there was no evidence to back the statement that the administrative decision regarding the tree mitigation was unreasonable or in the best interest of the public. Mr. Keyser argued the Code exists for the best interest of the public, and that the replacement of the trees was also in the best interest of the public. He addressed comments in the email regarding stormwater management and stated it

should have been accounted for at the time of purchase and was not relevant to the tree mitigation issue. He highlighted an additional line from the email, as follows:

"We simply wish to be treated reasonably and fairly by the City which we serve, provide 70 jobs, pay taxes, and most importantly call home."

Mr. Keyser argued the applicants had been treated reasonably and fairly and was the same treatment as all other applicants as it was prescribed by Code. He stated in an effort to be fair and business-friendly, staff had issued the permits without a resolution to the tree mitigation. He discussed the fees and stated they were the dollar amounts prescribed within the Code.

Mr. Keyser closed his presentation with a recommendation the request be denied.

Chair Dangervil accepted the staff report as product of effort and called for questions of staff from the Board.

Vice Chair Artner stated when the Board was presented with Margate 2.0, there were no issues eliminating huge areas of green space in Margate. He argued the City claiming to be business friendly and charging a business a ridiculous amount of money for one (1) tree was hypocritical. Vice Chair Artner reminded the Board that Culver's had many setbacks since purchasing the land, including the drainage issues discussed.

Chair Dangervil asked that comments be restricted to staff questions at this time.

City Attorney Smith explained the Quasi-Judicial role of the Board.

Vice Chair Artner asked whether the drainage problem that Wawa had was created because Broward County did not have enough drainage on U.S. Route 441. Mr. Keyser responded in the negative.

Vice Chair Artner stated that was wrong, because when this problem came up, it was admitted Broward County was the issue. He stated that was the information he was given at the time.

Chair Dangervil reiterated that comment should be restricted to questions of staff.

Vice Chair Artner argued he was being muzzled and stated it was a shame Margate was treating new businesses like that.

Chair Dangervil asked whether the Board had any further questions. He invited a presentation of the applicant.

Eric Pierce, Owner/Operator of Culver's Margate, made a presentation. He provided a brief background on the project, including the history of the stormwater issues on the property. He stated he was not aware of the stormwater issues until after a purchase agreement was signed

and explained the remedies reached in cooperation with the previous owners and during the construction phase of the project. Mr. Pierce stated had he and his two (2) business partners from Wisconsin known then what they now know about the land, they would not have made the investment. He discussed the Culver's community-minded and family-oriented philosophies.

Mr. Pierce stated the Wawa property had received 13 variances. He discussed mounting unexpected costs throughout the Culver's project, including paying into a fund in lieu of burying power lines, and stated the business did not have the option to have the lines buried due to Florida Power & Light closing the file. Mr. Pierce agreed with Mr. Keyser's assertion that the details of the tree mitigation should have been worked out in advance, so they knew where they stood with the trees. He stated the civil engineer did not initially tell them they had specimen trees, and it became an unexpected issue later. He argued anyone looking at the 27 trees on the site would have said none of them were in good shape.

Continuing, Mr. Pierce reviewed the Guaranty and Replacement Agreement and stated his interpretation of it was that a request for appeal from this Board had always been an option under the agreement. He stated he had a phone conversation with the City Manager and Mayor, and they agreed to bring the valuation down to \$47,000. He explained that was the source of the figure in his email to Ms. Howald. Mr. Pierce questioned the appraisal and stated while he understood the Code dictated it, he disagreed with the number and felt it was exorbitantly too high. He argued the trees which came down needed to come down, as most were in poor condition or at the end of their lives. He stated the landscape plan to put in healthy trees on the property was quoted at \$135,000.

Mr. Pierce stated maybe the Code needed to be changed. He discussed efforts to bring a new business to the community and stated they had been involved in the project for two (2) years. He closed by asking the City to waive the fee, or to pull half of the amount paid in lieu of burying the power lines. Mr. Pierce discussed the Ordinance which resulted in the fee for the power lines and stated he took issue with being the first it was assessed on. He stated \$300,000 in fees had already been paid to the City and County to build the restaurant.

Mr. Pierce asserted the property would look nicer than it had in 50 years once the project was completed. He stated the fee for the tree mitigation might as well be \$1 million, because he did not have it and did not think it was fair. He asked that the Board understand his situation and the difficulty opening a small business during COVID-19. He stated there was a chance the building could sit as is if the developers were unable to pay the bills and asked that a waiver be granted.

Chair Dangervil opened questions from the Board. He asked whether Mr. Pierce or his team had sent a surveyor or other person to examine the condition of the site prior to purchase. Mr. Pierce stated they had.

Chair Dangervil asked whether they had sent someone to actually physically examine the site. Mr. Pierce stated he believed there was a purchase agreement in place at the time. He stated the seller had guaranteed that based on what they knew of the site's history, they would not have

these problems. He asserted it had not come up until after they had made the purchase and were going through the process. He noted once the drainage issues came to the attention of the sellers, they had come down on the price \$200,000 to compensate for costs which would be incurred, and at the same time filed a lawsuit.

City Attorney Smith entered into the record information given the City, including the date of purchase.

Chair Dangervil stated his question was not the date of purchase but the date the developers had found out about the problems with the site. Mr. Pierce stated neither the seller or purchaser knew the scope of the problems until they were well into the purchase process and had spent money on architects and consultants.

Chair Dangervil asked for clarification on the telephone call with the Mayor and City Manager, in which Mr. Pierce stated they reduced the value of the tree. He asked how that conversation came about. Mr. Pierce explained the phone call had initiated with the City Manager calling him on his cell phone. He stated it was his understanding the Mayor was on conference.

Chair Dangervil noted Mr. Keyser had stated in his presentation the valuation of the trees was based only on DEES assessment. He asked whether the Mayor or City Manager would be able to change that assessment. Mr. Keyser stated not to his knowledge, but he would defer to the City Attorney.

City Attorney Smith stated what she believed would happen was that if there was a conversation to try to resolve an outstanding issue, the City Manager would speak with the Director of DEES to try to come up with a number which was a mitigation of the figure to try to be business friendly. She explained that similar to the way the Guaranty was drafted, the figure would have then been presented and agreed upon by DEES. City Attorney Smith stated there was also nothing within Code which stated staff could do a Guaranty, but it would come through the City Manager and involve DEES to craft language.

Mr. Keyser noted he did know the basis of the \$47,000. He stated if you take the original assessment completed by DEES on April 15 and substitute the figure from Mr. Pierce's private appraisal for tree 26, the total reached was \$47,000. He stated his exception would be that DEES did not agree to that number. He stated staff evaluated it and had conversations but did not accept an agreement.

Chair Dangervil asked what system is used to appraise the trees. Mr. Keyser pointed to the documentation in the backup, which referenced Guide for Plant Appraisal, Ninth Edition as Amended by the Council of Tree and Landscape Appraisers.

Vice Chair Artner had technical difficulties and was unable to make comment.

Chair Dangervil confirmed that three (3) trees remain of the original 27. Mr. Keyser stated that was correct.

Chair Dangervil asked whether the three (3) trees were inside the property lines. Mr. Keyser stated they were inside, and close to, the property line.

Chair Dangervil asked for clarification on which trees needed to be mitigated. Mr. Keyser explained none of the four (4) specimen trees to be mitigated were among the three (3) trees remaining on the property.

Chair Dangervil stated it was great that Culver's was coming into Margate and making the investment into the land, but he found it interesting they had not gone into enough detail prior to purchase to find out if there would be any hiccups that might occur within the project. He stated surveying the site was a thing he questioned. He asked Mr. Pierce to clarify that the problems were determined in September and whether the previous owner had mentioned them.

Mr. Pierce stated they were not aware of the extent of the problem initially. He explained the previous owners had originally segmented the property to put in a drainage system. He discussed the negotiation to purchase instead of lease, and stated it is not uncommon in development projects to come across unforeseen things. He noted they had hired the same civil engineer that built the Wawa and had assumed he knew what was going on with the property as a result of that project. Mr. Pierce stated the engineer did not know the scope of the problem because the previous owners did not disclose it. He noted he thought they were buying a piece of property in good faith that they could manage, but by the time they knew they were in too deep and could not pull out. He stated the trees had to come out because of the extensive nature of the drainage system.

Chair Dangervil asked Mr. Pierce what was fair to him as far as mitigating the trees. Mr. Pierce argued it is an arbitrary process and noted three (3) arborists using the same formula had come up with different figures. He asserted what was fair to him was that all of the new young trees being planted in the landscape plan be considered mitigation for the neglected trees which were removed. He noted some of the new trees were specimen variety.

Vice Chair Artner asked the applicant whether he had voluntarily made the drainage system larger. Mr. Pierce responded that he had not. He stated it had to be made larger to manage the excess water from the Wawa property and the stormwater from the site.

Vice Chair Artner asked whether it was a requirement made or whether they could have just made the system large enough to handle their own stormwater. Mr. Pierce stated they could have, but Wawa would just be underwater forever.

Vice Chair Artner asked if it was done voluntarily to protect his own property. Mr. Pierce confirmed this, as well as to be a good neighbor to Wawa.

Vice Chair Artner asked if Wawa had offered to share the cost, since they are talking one-third of the site's water. Mr. Pierce stated they had. He noted the seller came down \$200,000 on the purchase price to defer some of the costs of the system.

Vice Chair Artner asked if the City had offered credit as a result. Mr. Pierce stated they had not.

Vice Chair Artner asked if anyone else had offered reimbursement of the additional expenses incurred. Mr. Pierce said no. He stated they were happy to have been able to obtain a CRA grant. He noted they had located the building in a revitalization district, and to him it defeats the purpose to hit a business with excessive Code requirements in an area they want made better. He asserted cutting down trees in the development of a property is normal.

Vice Chair Artner asked how much more the cost of the drainage system was compared to if they had just built for their own drainage water. Mr. Pierce estimated \$250,000. He stated they had come off the price \$200,000 and noted the sellers had been in the development business for 40 years and wanted to clean up their problems and leave.

Vice Chair Artner asked how much the City wanted for the tree mitigation. Mr. Pierce stated \$47,000, but he was not clear on the number.

Vice Chair Artner asserted \$250,000 more was spent on the drainage system in order to handle one-third of a property which is not his, and on top of that amount to be a good neighbor, the City was now asking \$47,000 for removal of a tree to be a good neighbor.

Mr. Pierce stated he did not expect the City to help him pay for his stormwater system, but he appreciated the concern.

Vice Chair Artner stated he wanted to make the expenses clear and understand it for himself.

Mr. Pierce noted there was also an option of an above ground retention system on the site, but they thought it was unattractive. He stated there were landscaping and developing the entire site, including an additional building between Culver's and Wawa.

Chair Dangervil asked Mr. Pierce if he had any questions of the Board or staff. Mr. Pierce stated he did not.

Chair Dangervil opened the item to public comment.

Richard Zucchini, 380 Lakewood Circle East, stated the hardship was presented because of inadequate drainage by Broward County, and was the County's fault. He stated the County did not have backflow valves and lacked the ability to manage the level of the water drainage. He asserted he was shocked at a valuation of \$120,000 for a sickly-looking tree with little canopy. He argued the tree had a lot of divergent and spreading limbs and would have been a hazard. He stated Mr. Pierce did the City a favor by cutting down the tree, and the argument was bad posture.

by the City. Mr. Zucchini stated only 25 percent of the City's property taxes come from commercial, and argued the City has to do a better job and be more business friendly. He asked the Board to relieve the applicant of any penalty.

Chair Dangervil closed the public hearing and invited closing comments.

Mr. Keyser stated the \$120,000 valuation was for four (4) trees, not one (1), and explained there did not have to be any money given the City, as the owner had the option to plant 161 trees on his property or elsewhere in the community. He explained if Mr. Pierce opted to write a check, it would go to the Tree Preservation Fund, which is regulated for that purpose. Mr. Keyser stated this rule had been in the Code for a long time and suggested if appointed Boards and elected officials in the City wanted to be more business friendly, the Code needs to be revised to allow that. He noted there had not been one (1) deviation from the Code to assess the applicant in a way that was not knowable and could not have been discovered with due diligence.

Chair Dangervil opened the item to Board discussion.

Ms. Zoubiri argued there is nothing wrong with the Code, as the Code is meant to protect the trees. She stated she understood there was a financial hardship and actual issues which had been revealed to the builder over time. She noted this was a difficult time for everyone. Ms. Zoubiri stated she did not say they should waive the Code because no one should chop a tree unless they preserve a tree. She asserted the trees are like elephant tusks, and you do not kill an elephant to take the tusks. She argued the Code needed to be protected, but they also needed to look at the hardship on this new business in the City.

City Attorney Smith stated there seemed to be confusion regarding the issue, so she wanted to provide a framework. She explained staff's presentation showed the Guaranty signed in January placed the value at \$120,754 and the applicant had provided competent and substantial evidence of a second arborist assessing the trees and coming to the basis of \$47,000. She noted the evidence provided by the applicant could be used to make a decision, as the burden was on the appellant to bring evidence.

Vice Chair Artner asked staff about a discussion at a Commission meeting regarding permits for cutting down trees, and stated he believed there was a State Statute change which prevented municipalities from requiring permits to cut trees or from preventing removal of trees. City Attorney Smith stated it was last year, and pursuant to 163.045, however it was only on residential property, not commercial.

Chair Dangervil stated his point of view was that the City has its Codes to follow, and the Board has to be clear minded when it comes to the facts in place and the Code. He noted he was with those who believed the Code needed to be updated, but there are rules to follow.

Vice Chair Artner made the following motion, seconded by Mr. DeCristofaro:

MOTION: TO WAIVE THE FEES.

ROLL CALL: Mr. Dangervil – Yes; Mr. Artner – Yes; Ms. Lore – Yes; Mr. DeCristofaro – Yes; Ms. Zoubiri – Yes. The motion passed with a 5-0 vote.

GENERAL DISCUSSION

Ms. Lore thanked City staff and Commission for all they are doing to keep the City functional, healthy and safe during these hard times.

Ms. Zoubiri thanked Mr. Pierce for opening a business in the City and wished him luck.

Chair Dangervil stated he looked forward to eating at Culver's and said he was glad it had worked out for Mr. Pierce.

Vice Chair Artner thanked his colleagues for his time on the Board and stated it was an awesome experience to give back to the community.

Mr. DeCristofaro thanked staff for everything they do and agreed the Code needs to be changed. He stated especially in these times, Margate needs to be a lot more business friendly. He wished everyone be safe.

There being no further business to discuss, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Elizabeth Taschereau, Director of Development Services