

CONSTRUCTION AND PROPERTY MAINTENANCE CODE BOARD OF APPEALS

The Construction and Property Maintenance Code Board of Appeals meeting was held on May 31, 2018 at 4:00 p.m. with Chairman Mr. Anderson presiding. Members present were Mr. Lewis, Mr. Neil, and Mr. Martin. Staff members present were Mr. Pepper, Mr. Hugg, and Ms. Devine.

AGENDA ADDITIONS/DELETIONS

Mr. Neil moved for approval of the agenda, seconded by Mr. Lewis and unanimously carried.

Election of Chair

Property Maintenance Code Violation (Chapter 106-130 - Wrecked, Nonoperating, or Improperly Parked or Equipped Vehicles - (b) Leaving Vehicles on Property) - Appeal of Decision - 218 North Kirkwood Street (Ronnie James Henry)

Ms. Velvet Bowen, Code Enforcement Officer, reviewed the case history for the vehicle at 218 North Kirkwood Street.

Responding to Mr. Martin, Ms. Bowen stated that she did not believe the sticker was still evident when she returned seven days later. She noted typically, people take the stickers off.

Responding to Mr. Neil, Ms. Bowen stated she obtained the address for the vehicle from either the house next door or two houses down. She noted that she asked the neighbor whose vehicle it was, they were not sure specifically, but knew that it belonged to someone residing at or visiting 218 North Kirkwood. Mr. Neil noted that looking through the documents it indicated that the address was for someone who lived in Seaford, Delaware. Ms. Bowen stated that they send notice to the vehicle owner and the property owner. She stated that she ran the vehicle through DELJIS, the address on the registration is in Seaford. Ms. Bowen noted she sent the notice to the vehicle owner at that address and to the property owner, then as a courtesy, she sent it to the tenant at 218 North Kirkwood just to advise them, this vehicle is on the property you are renting. It is illegal, to give them a chance to contact her.

Responding to Mr. Neil, Ms. Bowen stated she did not know how the vehicle got there without the tag and noted that she spoke with the property owner who did not know Mr. Henry.

Responding to Mr. Martin, Ms. Bowen stated she contacted the tow truck company and met them at the address at about 1:30 p.m. on the 17th and they towed the vehicle.

Responding to Mr. Anderson, Ms. Bowen stated that Mr. Henry did not contact her within the seven days between the time it was towed and the original notice and did not contact her until the vehicle was towed.

Responding to Mr. Lewis, Ms. Bowen stated that there was not a specific complaint for this vehicle, but there were neighbor complaints about trash and grass and they did complain about vehicles being on the property, but more in reference to a box truck in somebody's backyard.

Responding to Mr. Lewis, Ms. Bowen stated she came across this vehicle dealing with a prior

complaint in the neighborhood.

Mr. Tim Taraila, Code Enforcement Supervisor, clarified the City Code. He noted that if it is junk, disabled, unable to operate legally in the street, they can tag it for five days. If it is unregistered, they can give the owner, with permission, up to 90 days to keep it until they get the vehicle tagged. Mr. Taraila stated by policy, they do seven days, just to give a little bit extra time, which is what Ms. Bowen did. He stated the vehicle is tagged with a red sticker, that way anybody in the area can see that it was tagged. Mr. Taraila noted they also run it through by VIN to get further information sent out, if anything comes up the owner is notified that the vehicle is tagged even if they do not live at the location.

Responding to Mr. Anderson, Ms. Bowen stated the letter is dated for May 10th and that mail is sent out daily.

Mr. Taraila noted that the sticker that they tag the vehicle with states if it is not removed by a certain date, it is going to be towed. Ms. Bowen noted contact information is included on the sticker.

Responding to Mr. Anderson, Mr. Henry stated as soon as he saw the sticker he called to let the City know it is his personal goods.

Ms. Bowen stated that after running the VIN number, the registration number has a U in front of it. She stated she contacted the DMV who clarified that U tags are issued to show ownership, but it is not registered to be legally driven on a public street. Mr. Taraila clarified that it is a title.

Mr. Anderson stated that the code made it so Mr. Henry can keep the property, but what they are talking about is the time, place and manner of restriction.

Ms. Bowen stated that the Code does say that in the case of operating unregistered or uninspected vehicles they may not remain on the property for more than 90 days. No person shall leave such vehicle on any property within the City for a time longer than five days or 90 days in the case of operating unregistered or uninspected vehicles.

Mr. Anderson expressed concern regarding how the code was written. He asked if the appellant should have 90 days. He noted the code states no person shall leave such vehicle on any property within the city for a time longer than five days or 90 days.

Mr. Anderson asked if anyone ever observed that the vehicle moved before it was towed or was there evidence of it being moved. Responding, Ms. Bowen stated the neighbor said that the vehicle had been driven, but she did not witness it herself. She noted it appeared to be in the same position it was when she tagged it.

Responding to Mr. Anderson, Mr. Henry stated the vehicle is very operational. Mr. Henry noted he sold his car to his daughter.

Mr. Neil stated he did not see anything about a vehicle towed to that address. He noted he had seen the documents where Mr. Henry gifted the car to his daughter, but did not see any documents that Mr. Henry took it back or that it was gifted back to him, which means that the question is, does he even own the car if he gave it to his daughter. Mr. Neil noted that he did not see anything in terms of how Mr. Henry got around without actually driving it.

I saw documents in there that at one point in 2017, he did have insurance and that insurance covered over to 2018. I didn't see it switched over to his daughter. So, there's no evidence in this document that he gave us that he even owns the car, it may still belong to his daughter because it hasn't been switched back.

Mr. Henry stated that he had gone to the DMV previously to have this case handled. Mr. Anderson advised that it may be to Mr. Henry's benefit to allow the City's attorney to answer Mr. Anderson's question regarding the Code.

Responding to Mr. Anderson, Mr. Pepper stated that it was one of the most inartfully written sections of the code he's ever read but it appeared to him that with unregistered vehicles, the time limit is 90 days.

Mr. Anderson advised Mr. Henry that he should stop talking and ask for a ruling.

Mr. Martin stated that there is an office policy that came out on August 24th, 2017 that addresses that issue and a part of that policy is that if the vehicle is unregistered for over one year, we consider it junk.

Responding, Mr. Anderson questioned if there is any evidence that the vehicle was there before it was reported? Mr. Martin stated the he did not know.

Responding to Mr. Anderson, Mr. Martin confirmed that his interpretation is that a person has 90 days for an unregistered vehicle. He stated that the title was dated March of 2018 and there is not evidence in the record of the prior providence of the vehicle.

Responding to Mr. Henry, Mr. Anderson stated that from the evidence that can be seen, the 90 days were not up as this was discovered in May.

Mr. Neil stated that the 90 days would take it to August.

Responding to Mr. Anderson's question for legal advice on next steps, Mr. Pepper stated that the policy did not trump the ordinance and the vehicle cannot be considered junk until it reaches the expiration of 90 days.

Mr. Anderson stated that he would be willing to accept the motion on the advice of legal council.

Responding to Mr. Martin, Ms. Bowen stated that she was unaware of where the car was being held currently. She stated that after it was towed on May 17th, her case was over.

Mr. Anderson stated that he would like to entertain the motion to accept.

Mr. Lewis seconded.

Responding to Mr. Hugg, Mr. Anderson confirmed that the motion would be that their decision would be in favor of the appellant based on the code as interpreted by legal council. Mr. Hugg stated that the vehicle should not have been towed before 90 days and that Mr. Henry would be exonerated from this violation.

Responding to Mr. Anderson's question of it there was any discussion, Mr. Martin answered no.

Mr. Martin moved to exonerate Mr. Henry from this violation . The motion was seconded by Mr. Lewis and unanimously carried.

Mr. Martin moved for adjournment, seconded by Mr. Lewis and unanimously carried.

Meeting adjourned at 4:36 p.m.

David Anderson
Chairman

AMP/JS/dd

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