

**THE CITIZEN CODE ENFORCEMENT BOARD
NOTICE OF HEARING
TO BE HELD AT 4:30 P.M.
FEBRUARY 16, 2010
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA**

Members:

John Shelby, Chairperson
Michael Slayton, Vice Chairperson
P.J. (Pat) Arvidson
Keith Gerhartz
Ken Taylor
Katharine (Kathy) L. Cooley
Megan Badgley

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of a hearing of the Citizens Code Enforcement Board, to be held on TUESDAY, FEBRUARY 16, 2010 at 4:30 P.M. in the City Commission Chamber, City Hall, 210 Sams Avenue, New Smyrna Beach, Florida, for consideration of the following:

John Shelby, Chairperson
Citizens Code Enforcement Board

I. ROLL CALL:

II. DISCLOSURE OF EX PARTE COMMUNICATIONS:

Members of the Citizens Code Enforcement Board are asked to please disclose, for the record, the substance of any ex parte communications that have occurred prior to this public hearing.

III. APPROVAL OF MINUTES:

January 19, 2010

IV. SWEARING OF CITY STAFF:

V. CASES IN COMPLIANCE WITH THE BOARD'S ORDER:

C2009-0710: TBC Retail Group, Inc 1698 State Road 44

The prohibited signs have been removed from the subject property. The fine imposed by the Board remains at \$3,500.00.

C2009-0746: Empirian Sugartree II, LLC

All permits and inspections were conducted in the time specified by the Board.

January 19, 2010: The Board found Empirian Sugartree II, LLC in violation and gave Empirian Sugartree II, LLC until the 5th day of February 2010 to bring the subject property into compliance by obtaining the required building permit and final inspections or face a fine of \$100.00 per day for each and every day the property remains in violation.

VI. OLD BUSINESS:

C2009-0309: Daniel C. Troian 409 Magnolia St. (POSTED)

Permitting or causing to be permitted a residential property to exist that has not been kept clear of dead/dying tree(s) in violation of §307.4 of the Standard Housing Code, 1997 Edition.

January 19, 2010: The Board found Daniel C. Troian in violation and gave Mr. Troian until the 5th day of February 2010 to bring the subject property into compliance or face a fine of \$100.00 per day for each and every day the property remains in violation.

C2009-0575: Carol Baker 423 Palm Street (SERVED)

Permitting or causing to be permitted a residential structure to exist that has not been properly maintained in a safe and sanitary condition in violation of §101.6 of the Standard Housing Code 1997 Edition.

- Hole in roof admitting rain
- Hole in floor
- Electric wiring in electric panel box
- Heat/air unit
- Protective coating

November 19, 2009: The Board continued this case until the hearing on the 16th day of February 2010.

C2009-0825: Bobbi Jean Bresnowitz 629 Dora Street (SERVED)

Permitting or causing to be permitted discarded and abandoned waste material upon the subject property in violation of Article IV. Nuisances of the City Code of Ordinances, §38-113. Waste material, discarded and abandoned items.

January 19, 2010: The Board continued this case until February 16, 2010.

VII. NEW BUSINESS:

C2009-0729: Upper Deck Bar & Grill 1414 S. Atlantic Avenue (POSTED)

- A) Permitting or causing to be permitted the operation of a business (Upper Deck Bar & Grill) without a business license tax receipt in violation of the City Code of Ordinance Chapter 74 Taxation* §74-141. Duration and expiration of licenses and delinquent licenses.
- B) Permitting or causing to be permitted the placement of signs on public property in violation of the Land Development Regulations §604.14 B. Prohibited signs.
- C) Permitting or causing to be permitted the installation of a sign without first obtaining the required permit in violation of the Land Development Regulations §604.14 D. Permits.

C2009-0824: All Phases, LLC – Michael Shane Miller (SERVED)

**801 Maralyn Avenue
709 Evergreen Avenue 711 Evergreen Avenue**

Permitting or causing to be permitted an installation (pavers) on publicly dedicated property without first receiving a permit to make such installation in violation of Article III Repair and Improvements* §70-91. of the City Code of Ordinances.

C2009-0831: Fences By Design 574 Aeolian Drive (SERVED)

Permitting or causing to be permitted the installation of fencing without first obtaining the required permit in violation the City Code of Ordinances Chapter 26 BUILDINGS AND BUILDING REGULATIONS* §26.172. Penalties for work commencing before permit issuance.

VIII. REPEAT BUSINESS:

IX. ADJOURNMENT:

Pursuant to Florida statute 286.0105, if an individual decides to appeal any decision made by the Citizens Code Enforcement Board with respect to any matter considered at this hearing, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. Such person must provide a method for recording the proceedings. In accordance with the Americans with Disabilities Act (ADA), persons needing assistance to participate in any of these proceedings should contact the Administrative Specialist of the Citizens Code Enforcement Board listed below prior to the hearing:

, Administrative Specialist
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2265
Fax: 386.424.2148

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING
HELD AT 4:30 P.M. – JANUARY 19, 2010
COMMISSION CHAMBERS, 210 SAMS AVENUE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of January 19, 2010, was called to order at 4:30 p.m. Answering to roll call were:

John Shelby (Chair)
Michael Slayton (Vice Chair)
Pat Arvidson
Ken Taylor
Megan Badgley

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Permit & License Technician Dorlisa Pogany. Katharine Cooley and Keith Gerhartz were absent.

II. **DISCLOSURE OF EX PARTE COMMUNICATIONS:**

Members of the Citizens Code Enforcement Board were asked to please disclose, for the record, the substance of any ex parte communications that occurred prior to this public hearing.

Mr. Slayton stated for the record that Shane Miller of All Phases LLC came to his job site to discuss his case #C2009-0824. Mr. Slayton told Mr. Miller that he could not discuss the case. He stated that they discussed other things but that it had no influence on him regarding Mr. Miller's case. Mr. Shelby asked if he had any prejudice. Mr. Slayton stated no prejudice, no nothing regarding the case.

III. **APPROVAL OF MINUTES**

November 17, 2009

Ms. Arvidson made a motion to approve the minutes of the November 17, 2009, hearing as written; seconded by Mr. Taylor. Motion carried unanimously on roll call vote 5-0.

IV. **SWEARING OF CITY STAFF**

Regina Lynne Kunkle, Code Enforcement Supervisor, and Barbara Jo Bobelak, Code Enforcement Officer, were sworn for testimony.

A brief discussion ensued about the progress made to date, permits required for the pool and the length of time for the continuance.

Mr. Slayton made a motion to change the Board's compliance date from January 19, 2010 to March 16, 2010; seconded by Mr. Taylor. Motion carried unanimously upon roll call vote 5-0.

C2009-0710: TBC Retail Group, Inc 1698 State Road 44

(A) Permitting or causing to be permitted the use of prohibited signs in violation of Article VI. Development Design & Improvement Standards, §604.14 B. of the Land Development Regulations.

Mr. Shelby asked for the record to reflect that no one was present to represent this case and asked staff for their recommendation.

Mr. McDole stated the issue today is to determine whether or not TBC Retail Group came into compliance within 48 hours given by the Board on November 19, 2009 and whether to impose the fine starting on that day.

Ms. Kunkle stated it is also to authorize the recording of the lien.

A discussion ensued about clarification on how to determine if it is in compliance, number of days of non-compliance and the amount of fines.

Mr. McDole stated the Board needed to hear on what dates they were in non-compliance after November 19, 2009 and determine whether or not to assess fines for those dates.

Mr. Shelby asked staff to present the dates of non-compliance.

Officer Bobelak testified there are eleven (11) days documented where they were not in compliance.

Eric Wilcoxin was sworn for testimony.

Mr. Wilcoxin testified that he is the owner of American Auto and has to comply with all the City's codes and would like to see his competition have to do the same. Further, Mr. Wilcox testified that he has dates and photos of the inflatable signs in addition to the City's and asked the City to fine them.

Mr. Shelby explained that fines can be assessed as a lien and the City can foreclose on a lien if the property owner does not pay the fines.

Mr. McDole stated that liens could be foreclosed after three (3) months just like they foreclose on a mortgage.

A brief discussion ensued about adding the additional days from people other than staff and if it was legal.

Mr. McDole stated Mr. Wilcox had to give testimony today where it can be incorporated into the meeting and the Board could use the additional days.

Mr. Wilcox testified the 30 ft inflatable gorilla was up November 27 – 29, 2009 and asked for these dates to be incorporated into dates provided by Staff.

Ms. Arvidson asked staff for a recommendation.

Ms. Kunkle recommends the Board impose a \$250 per day fine and authorize the City to record a lien.

Mr. Taylor made a motion to impose a fine of \$3500 as of today plus a fine of \$250 per day for each day that the property is in violation after today; seconded by Ms. Badgely. Motion carried unanimously on roll call vote 5-0.

VIII. NEW BUSINESS:

C2009-0309:

Daniel C. Troian

409 Magnolia St

Permitting or causing to be permitted a residential property to exist that has not been kept clear of dead/dying trees(s) in violation of §307.4 of the Standard Housing Code, 1997 Edition.

Mr. Shelby asked for the record to reflect that no one was present to represent this case and asked staff for their recommendation.

Officer Bobelak testified she posted the property on January 8, 2010 and took photos on January 8, 2010 showing the postings and the dead tree that she is dealing with on Mr. Troian's property. Further, Officer Bobelak testified that Mr. Troian signed for the original notice in September and he contacted her saying he was trying to get some bids on having the tree removed. Officer Bobelak testified that she has had no further contact since November 9th and he did not accept the certified mail, which is why she posted the property.

Officer Bobelak testified for the record she has been in touch with the neighbors and branches are falling onto their property. Further, Officer Bobelak said that she contacted the Utilities Commission and they did take some of the tree limbs off from the utilities lines.

Mr. Slayton asked staff for a recommendation.

Officer Bobelak recommends finding the property in non-compliance and give the property owner until the 5th of February to bring property into compliance or face a fine of \$50 per day.

Mr. Slayton made a motion to find case C2009-0309 in violation and give the property owner until February 5, 2010 to come into compliance or face a fine of \$100 per day; seconded by Mr. Taylor. Motion passed on roll call vote 4-1 with Ms. Arvidson dissenting.

C2009-0746: Empirian Sugartree II, LLC
1917 Sugartree Cir 1921 Sugartree Cir

Permitting or causing to be permitted the interior of a structure to exist that has not been maintained in good, clean and sanitary conditions in violation of §305.1 of the International Property Maintenance Code, 2006 Edition.

Mr. Shelby asked for the record to reflect that no one was present to represent this case and asked staff for their recommendation.

Officer Bobelak testified that 1917 Sugartree Circle has been brought into compliance. Officer Bobelak testified that the permit was pulled and they had final inspections. Further, Officer Bobelak testified that 1921 Sugartree Circle has not completed the permit paperwork and submitted it but it has been picked up. Officer Bobelak testified she had photos showing the floors in the bathrooms are rotting under the toilets and when you sit on the toilet, it wobbles around.

Mr. Shelby asked staff for a recommendation.

Officer Bobelak recommends to find the property at 1921 Sugartree Circle in non-compliance and give them until February 5th to get their permit and final inspections or face a fine of \$100 per day.

Ms. Badgely made a motion to find 1921 Sugartree Circle in violation and to come into compliance by February 5, 2010 or face a fine of \$100 per day; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 5-0.

C2009-0815: Beachside Tavern 690 3rd Avenue
R & B LLC Mark Dam

Officer Bobelak informed the Board that this case has been brought into compliance.

C2009-0824: All Phases LLC – Michael Shane Miller

**801 Maralyn Avenue
709 Evergreen Avenue 711 Evergreen Avenue**

Staff withdrew this case.

C2009-0825: Bobbi Jean Bresnowitz 629 Dora Street

Permitting or causing to be permitted discarded and abandoned waste material upon the subject property in violation of Article IV. Nuisances of the City Code of Ordinances, §38-113. Waste material, discarded and abandoned items.

Ms. Bresnowitz and Officer David Williams were present and sworn for testimony.

Ms. Bresnowitz stated that she was not in agreement with some of the violations and it was a matter of what you consider abandoned waste material. Ms. Bresnowitz testified that items under her boat were items such as housewares gathered from the area Churches for the homeless and underprivileged people so that they could have a Christmas.

Officer Williams testified the violation was brought to his attention by a passerby on Dora Street who complained about abandoned material to include wood, trailers and other material on the property that they thought might be in violation of City Ordinance and he has photos. Further, Officer Williams testified that by an inspection from the roadside there were several trailers on the property, one in which is lawfully tagged the other two (2) are not tagged or registered and that the conditions are so bad you can't read the VIN numbers on them to check registration with the State of Florida and does not have a title. Officer Williams testified the materials under the boat were in plastic containers and were household items and were covered up by a tarp. Further, Officer Williams testified some other items included wood material, sheets of plywood where the condition of the plywood had deteriorated to the point that the lamination was separating; a tire under the boat; and lattice work propped up to conceal the debris behind it. Officer Williams testified that he inspected the property today and some of the material under the boat has been removed, but the boat, trailer and lattice work is still there with the sheets of plywood still behind it which is in violation of City Ordinance. Further, Officer Williams testified that the boat is not in operating condition and is not sea worthy.

Ms. Bresnowitz testified the photos shown to her were of her property.

Mr. Slayton asked staff for a recommendation.

Ms. Kunkle asked Officer Williams for his recommendation.

Officer Williams testified that he would like to see the property come into compliance and would like more time for it to come into compliance and maybe point out some other stuff that she may not know that is in violation.

A brief discussion ensued about how much time would be needed to bring the property into compliance and what other actions need to be taken to bring property into compliance.

Ms. Kunkle stated that the City would like to ask Officer Williams a question. Ms. Kunkle asked Officer Williams how much more Ms. Bresnowitz has to do?

Officer Williams testified that the make shift lattice work is still there, there is wood debris behind it, tire under the trailer as far as the boat, he cannot tell you what needs to be done to bring it into compliance and get the trailer tagged. Further Officer Williams testified you would have to go to the property to look.

Ms. Kunkle testified that the next Code Enforcement hearing is February 16, 2010 and asked Officer Williams if that would be sufficient time to bring the property into compliance.

Officer Williams testified that it would be sufficient time.

Mr. Slayton made a motion to continue case C2009-0825 until the February 16, 2010 hearing; seconded by Ms. Arvidson. Motion carried unanimously on roll call VOTE 5-0.

VIII. REPEAT BUSINESS:

None

IX. ADJOURNMENT:

Mr. Taylor made the motion to adjourn; seconded by Mr. Slayton. All agreed and the hearing adjourned at 5:32 pm.