

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING
HELD AT 4:30 P.M. – FEBRUARY 16, 2010
COMMISSION CHAMBERS, 210 SAMS AVENUE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of February 16, 2010, was called to order at 4:30 p.m. Answering to roll call were:

John Shelby (Chair)
Michael Slayton (Vice Chair)
Pat Arvidson
Katharine Cooley

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Permit & License Technician Dorlisa Pogany. Ken Taylor, Megan Badgley 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. Shelby state that there were none

III. APPROVAL OF MINUTES

January 19, 2010

Ms. Arvidson made a motion to approve the minutes of the January 19, 2010 hearing as written; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 4-0.

IV. SWEARING OF CITY STAFF

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

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

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

Mr. Shelby noted for the record that no one was present to represent this case.

Ms. Kunkle informed the Board that this case has been brought into compliance but the Board needed to address the fine and authorize recording of the lien.

Mr. Slayton made a motion to find case C2009-0710 in compliance and establish a \$3500 fine for the non-compliance period of 14 days; seconded by Ms. Arvidson. Motion carried unanimously upon roll call vote 4-0.

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

Mr. Shelby noted for the record that no one was present to represent this case.

Ms. Kunkle informed the Board that this case has been brought into compliance.

Ms. Arvidson made a motion to find case C2009-0746 in compliance; seconded by Ms. Cooley. Motion carried unanimously upon roll call vote 4-0.

C2009-0309: Daniel C. Troian 409 Magnolia St

Mr. Shelby noted for the record that no one was present to represent this case.

Officer Bobelak testified that the Board had given Mr. Troian until February 5, 2010 to bring the property into compliance or face a fine of \$100.00 per day for each day of non-compliance. Further, Officer Bobelak explained that this case was brought into compliance on February 11, 2010, and that the Board would have to make a determination as to the fine amount.

Ms. Arvidson made a motion to find case C2009-0309 in compliance and to reduce the fine to \$100; seconded by Mr. Slayton. Motion carried unanimously upon roll call vote 4-0.

VI. OLD BUSINESS:

C2009-0575:

Carol Baker

423 Palm Street

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

Ms. Baker was present and sworn in for testimony.

Ms. Baker stated that all the work had not been completed and that only the roof and floor have been repaired. Ms. Baker further stated that D G Meyer would be getting a permit to correct the electrical problems.

Mr. Shelby asked Ms. Baker if the work would be completed by the March 16, 2010 hearing.

Ms. Baker stated it would be completed.

Mr. Shelby asked staff for a recommendation.

Officer Bobelak testified that a permit was issued to D G Meyer today for electrical work but was not sure if a permit was issued for the roof or floor work. Officer Bobelak further stated that the Building Department would determine if a permit is required based on the scope of work.

A brief discussion ensued about the scope of outstanding work to be completed.

Mr. Slayton made a motion to continue case C2009-0575 to March 16, 2010; seconded by Ms. Arvidson. Motion carried unanimously upon roll call vote 4-0.

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 was present and sworn for testimony.

Ms. Bresnowitz testified that she had removed the items from her lawn.

Ms. Kunkle informed the Board that this case was in compliance.

Ms. Arvidson made a motion finding case C2009-0825 in compliance; seconded by Mr. Slayton. Motion carried unanimously upon roll call vote 4-0.

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.

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 took photos showing the two (2) sandwich board signs located in the right-of-way and the wall sign. Officer Bobelak further testified that Item A is in compliance, Item B has one sandwich board sign now in right-of-way and Item C is still outstanding. Further, Officer Bobelak stated there were concerns if a sign permit could be issued for the wall sign due to existing signage.

A brief discuss ensued about signs in the right-of-ways and issues on existing signage.

Ms. Cooley made a motion to find Item A in compliance; Item B is to cease and desist immediate upon receipt of the Board's Order or face a fine of \$50.00 per day for each and every day of non-compliance; and C is to be brought into compliance by March 16, 2010; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 4-0.

C2009-0824:

All Phases LLC – Michael Shane Miller

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.

Mr. Billy Dean Elliot, representing Michael Shane Miller was present and sworn for testimony.

Ms. Cooley asked Mr. Elliot if he was familiar with the case. Mr. Elliot stated he was asked by Mr. Miller to appear before the Board because Mr. Miller was unable to attend.

Ms. Arvidson asked staff for their recommendation.

Ms. Kunkle testified that the case was withdrawn from January 19, 2010 per the City Manager's request. Ms. Kunkle further testified that Mr. Miller installed pavers on the right-of-way at 801 Maralyn Avenue, without a permit, but the owner has since received City Commission approval to allow the pavers to remain in the right-of-way. Further, Ms. Kunkle said that all three properties had right-of-ways disturbed and no permits issued prior to the commencement of work. Ms. Kunkle requests the Board to find Mr. Miller has been in violation and determine a fine for future violations.

A brief discussion ensued about assessing a fine and violations (past and present).

Ms. Arvidson made a motion that case C2009-0824 was in violation but is currently in compliance and a repeat offense shall initiate a fine of \$250 per day for each and every day of non-compliance; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 4-0.

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.

Vadim Abuzov was present and sworn for testimony.

Mr. Abuzov stipulated to the violation.

Ms. Arvidson asked staff for a recommendation.

Officer Bobelak testified that the violation was for commencing work without a permit and that an after-the-fact permit has been issued. Further, Ms Bobelak explained to the Board that the permit was issued for a 4 foot fence and that Mr. Abuzov installed a 6 foot vinyl fence, and that a 4 foot fence is the maximum height allowed for property adjacent to conservation land.

Ms. Kunkle testified that the City is requesting the same action apply to this case as the previous case C2009-0824, All Phases LLC, because the cases are similar in that both work without a permit .

Mr. Abuzov stated the owner is going to reduce the height of the fence to 4 feet.

A brief discussion ensued to height requirements, previous violations and fence restrictions.

Ms. Cooley made a motion to find case C2009-0824 in violation, and gave Mr. Abuzov until the March 16, 2010 hearing to bring the subject property into compliance and that failure to come into compliance will be cause for the Board to establish a fine at that hearing; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 4-0.

VIII. REPEAT BUSINESS:

None

IX. ADJOURNMENT:

Mr. Slayton made the motion to adjourn; seconded by Ms. Cooley. All agreed and the hearing adjourned at 5:20 pm.