

**THE CITIZEN CODE ENFORCEMENT BOARD
NOTICE OF HEARING
TO BE HELD AT 4:30 P.M.
APRIL 19, 2011
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA**

Members:

John Shelby (Chair)

Michael Slayton (Vice Chair)

P.J. (Pat) Arvidson

Katharine (Kathy) L. Cooley

Megan Badgley

Beverly Palmer

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of a hearing of the Citizens Code Enforcement Board, to be held on TUESDAY, April 19, 2011 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:**

March 15, 2011

IV. **SWEARING OF CITY STAFF**

V. **OLD BUSINESS:**

VI. **NEW BUSINESS:**

C2011-0167: Clancy's Cantina 301 Flagler Ave. SERVED

Permitting or causing to be permitted rubbish, sweepings, debris, trash, and waste material to be placed upon the streets, alleys, curbing or sidewalks causing a menace to traffic, either vehicular or pedestrian, and endangering the proper operation of the city's sewer or drainage system from the subject property in violation of §66.36. (6) of the City Code of Ordinance.

**C2011-0199: McCharacter's Music Café & Sports Bar SERVED
2004 N. Dixie Freeway**

- A) Permitting or causing to be permitted sound producing devices to be used in such a manner the sound produced by such devices is plainly audible from neighboring properties zoned for residential use at a distance in excess of 25 feet from the property line in violation of §38.73. (1) of the City Code of Ordinances.
- B) Permitting or causing to be permitted the use of loudspeaker, loudspeaker system or similar devices between the hours of 10:00 p.m. and 10 a.m. on weekends in violation of §38.73. (2) of the City Code of Ordinances.
- C) Permitting or causing to be permitted music to be played in such a manner that it was plainly audible while standing within the boundary limits of an adjacent or neighboring property zoned for residential use in violation of §38.73. (12) of the City Code of Ordinances.

- (1) Incident Report #: 201010-0405
Officer J. D. Shaffer (1120)
10/24/2010 00:49 Sun.
- (2) Incident Report#: 201010-0490
Officer R. J. Claudio (1360)
10/30/2010 00:08 Sat.
- (3) Incident Report#: 201010-0507
Officer M. D. Severance (1215)
10/30/2010 22:59 Sat.
- (4) Incident Report#: 201101-0182
Officer J. D. Shaffer (1120)
01/15/2011 19:54 Sat.
- (5) Incident Report#: 201103-0341
Officer B. Holcomb (1169)
3/19/2011 21:50 Sat.

VII. REPEAT BUSINESS:

VIII. 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: 386.424.2137
Fax: 386.424.2143

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING
HELD AT 4:30 P.M. – MARCH 15, 2011
CITY COMMISSION CHAMBERS, CITY HALL,
210 SAMS AVE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of March 15, 2011, was called to order at 4:30 p.m. Answering to roll call were:

John Shelby (Chairman)
Michael Slayton (Vice Chair)
Beverly Palmer
Megan Badgley

Also present were Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole. Chief Building Official Michael Knotek and Permit & License Technician Dorlisa Pogany. Pat Arvidson and Katharine Cooley 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 stated that there were none.

III. **APPROVAL OF MINUTES**

February 15, 2011

Ms. Badgley made a motion to approve the minutes of the February 15, 2011 hearing as written; seconded by Ms. Palmer. Motion passed on roll call vote 4-0.

IV. **SWEARING OF CITY STAFF**

Barbara Jo Bobelak, Code Enforcement Officer, was sworn in for testimony.

V. **IMPOSING FINES:**

C2011-0023

John Burke

506 Old Minorcan Trail

Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-112. of the City Code of Ordinances.

February 15, 2011: The gave Mr. Burke until the 28th day of February, 2011 to bring the property into compliance or face a fine of \$25 per day for each and every day the violation exists. Fine totaling \$325.00 as of today.

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

Mr. Shelby asked staff for a recommendation.

Officer Bobelak presented pictures dated February 11, 2011 showing the property posted and pictures dated March 15, 2011 showing the property has not been brought into compliance. Officer Bobelak recommends the Board find the property in non-compliance and impose a fine for \$25 per day.

Michael Knotek, Chief Building Official was sworn in for testimony.

Mr. Knotek stated he would like to recommend the Board to direct staff to clean up the lot, impose the fine and propose a lien on the property for the amount of the clean up and the fine.

Mr. McDole stated the Board cannot order a lot to be cleaned up unless it is a life safety issue or hazardous situation. Mr. McDole further stated to clean up the lot would require a different ordinance. The fine imposed will continue to accumulate for each day the property is in violation and the lien can automatically be recorded.

Discussion ensued among Staff and the Board requiring the process to foreclose a lien, complete a title search on properties and if a case can be returned to the Board in three months.

Ms. Badgley made a motion to impose a fine for \$25 per day for non-compliance retroactive from February 28, 2011; seconded by Ms. Palmer. Motion carried unanimously upon roll call 4-0.

Discussion ensued among the Board regarding the case being brought back in 90 days to consider foreclosure on the lien.

Ms. Badgley made a motion to bring case C2011-0023 back to the Board in 90 days; second by Mr. Slayton. Motion carried unanimously upon roll call 4-0.

C2011-0026

Tarpon IV, LLC

513 Josie Street

Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-111. of the City Code of Ordinances.

February 15, 2011: The Board gave Tarpon IV, LLC until the 28th day of February 2011 to bring the property into compliance or face a fine of \$25 per day for each and every day the violation exists. Fine totaling \$325.00 as of today.

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

Officer Bobelak stated Richie Lichberg signed for the certified mail and presented pictures dated March 15, 2011 showing the property has not been brought into

compliance. Officer Bobelak recommends the Board find the property in non-compliance and impose a fine for \$25 per day.

Discussion ensued among Staff and the Board regarding increasing the fine and if there has been any communication from anyone on the property.

Mr. Slayton made a motion to impose a fine for \$25 per day for non-compliance retroactive from February 28, 2011 and to bring case C2011-0026 back to the Board in 90 days; seconded by Ms. Badgley. Motion carried unanimously upon roll call 4-0.

C2011-0027 Tarpon IV, LLC 545 Charlovix Street

Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-111. of the City Code of Ordinances.

February 15, 2011: The Board gave Tarpon IV, LLC until the 28th day of February 2011 to bring the property into compliance or face a fine of \$25 per day for each and every day the violation exists. Fine totaling \$325.00 as of today.

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

Officer Bobelak stated Richie Lichberg signed for the certified mail and presented pictures dated March 15, 2011 showing the property has not been brought into compliance. Officer Bobelak recommends the Board find the property in non-compliance and impose a fine for \$25 per day.

Ms. Palmer made a motion to impose a fine for \$25 per day for non-compliance retroactive from February 28, 2011 and to bring case C2011-0027 back to the Board in 90 days; seconded by Ms. Badgley. Motion carried unanimously upon roll call 4-0.

VI. NEW BUSINESS:

**C2011-0029 Lost Lagoon Wings & Grill SERVED
515 N Dixie Freeway**

Violation of §74-146. Of the City Code of Ordinances operation of a business with an expired Business License Tax Receipt (Account #5886).

Violation of §604.10 G. of the Land Development Regulations exceeding the required number of parking spaces required by adding outdoor seating.

Officer Bobelak stated this case was brought into compliance prior to the March 15, 2011 meeting. No action required by the Board.

VII. REPEAT BUSINESS:

C2011-0055:

KB Homes Gold Coast, LLC

SERVED

Violation Locations:

**SR 44 west of Jungle Rd.
SR 44 east of N. Glencoe Rd.
SR 44 east of Sugar Mill Dr.
Sugar Mill Drive
Pioneer Trail
W. Canal Street**

Violation of §604.14 B. of the Land Development Regulations placement of prohibited signs in the right-of-way.

On the 17th day of April, 2007, the Citizens Code Enforcement Board entered an Order finding that KB Homes Gold Coast, LLC, was in violation of §604.14 B. of the Land Development Regulations. It is further the Order of this Board that KB Homes Gold Coast, LLC pay a fine of Five Hundred Dollars (\$500.00) per sign for each and every day the repeat violation that occurs.

Officer Bobelak stated Rena Farela signed for the certified mail. Officer Bobelak further stated she spoke to Leo Velez on March 1, 2011 who indicated KB Homes has gone through a re-organization and was not aware of the violation. Officer Bobelak presented the Board pictures showing the dates the signs were erected.

Discussion ensued among Staff and the Board regarding the number of occurrences, dates of occurrences, location of occurrences and what communication had been exchanged with KB Homes.

Mr. Slayton asked staff for a recommendation.

Officer Bobelak recommends to find KB Homes Gold Coast, LLC in non-compliance for repeat violation of Board Order dated 17th day of April, 2007.

Discussion ensued among Staff and the Board on the amount of fine since a repeat violation and lien will be assessed to any property in KB Homes Gold Coast, LLC name in Volusia County.

Mr. Shelby asked staff for a recommendation on the fine amount.

Officer Bobelak recommends \$50 per sign for each day in non-compliance.

Mr. Slayton made a motion to find case C2011-0055 in non-compliance and a fine of \$500 for all signs; seconded by Ms. Palmer. Motion failed for official action upon roll call, 3-1 with Mr. Shelby dissenting.

Discussion ensued among the Board regarding the lack of action from KB Homes in the past, continual problem with their signs and the amount of the fine.

Ms. Badgley made a motion to find case C2011-055 in non-compliance and impose a fine for \$200 per occurrence for a total of \$1600; seconded by Mr. Slayton. Motion carried unanimously upon roll call 4-0.

VIII. ELECTION OF OFFICERS:

Mr. Slayton nominated Mr. Shelby as Chairman; seconded by Ms. Badgley. Motion carried unanimously upon roll call 4-0.

Ms. Badgley nominated Mr. Slayton as Vice Chairman; seconded by Ms. Palmer. Motion carried unanimously 4-0.

VIII. ADJOURNMENT:

Mr. Slayton made the motion to adjourn; seconded by Ms. Badgley. All agreed and the hearing adjourned at 5:00 P.M.