

**THE CITIZEN CODE ENFORCEMENT BOARD
NOTICE OF HEARING
TO BE HELD AT 4:30 P.M.
AUGUST 16, 2011
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA**

Members:

John Shelby (Chair)

Michael Slayton (Vice Chair)

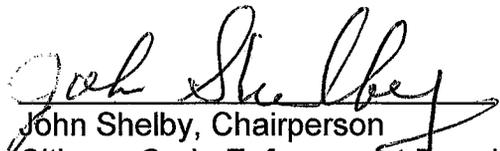
P.J. (Pat) Arvidson

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, August 16, 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:

April 19, 2011

July 19, 2011

IV. SWEARING OF CITY STAFF

V. OLD BUSINESS:

C2011-0229: Dennis C. Hadick 900 N. Atlantic Ave. Served

- A) Exterior surfaces that have not been maintained in good repair and free of holes, cracks, and deterioration in violation of §26-914 (2) of the City Code of Ordinances.
- B) Exterior surfaces that have not been maintained with a protective coating in violation of §26-914 (3) of the City Code of Ordinances.
- C) Exterior windows and doors shall be maintained in good repair, intact and functioning as originally intended or designed in violation of §26-914 (4) of the City Code of Ordinances.
- D) Exterior attachments, gutters, soffit, downspouts, lighting fixtures and utility connections that have not been maintained in good repair in violation of §26-914 (5) of the City Code of Ordinances.

July 19th, 2011: The Board entered an Order finding the property in non-compliance and gave Dennis Hadick 30-days to bring the property into compliance or face a fine of \$100.00 (\$25 per violation) per day for each and every day the property is in non-compliance.

**C2011-0357: GBL Properties LLC, 219 Washington St., Apt: A, B, C
Posted**

- A) Two (2) or more rental units without the City business license tax receipt in violation of §74-146. Of the City Code of Ordinances.
- B) Electrical system hazards in violation of §604.3 of the 2006 International Property Maintenance Code.
- C) Electrical equipment installation, receptacles, and luminaires in violation of §605.1 & 605.2 & 605.3 of the 2006 International Property Maintenance Code.

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. – APRIL 19, 2011
CITY COMMISSION CHAMBERS, CITY HALL,
210 SAMS AVE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of April 19, 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
Pat Arvidson

Also present were Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Building Official Michael Knotek and Permit & License Technician Dorlisa Pogany. Katharine Cooley arrived at 4:35 PM.

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**

March 15, 2011

Mr. Slayton made a motion to approve the minutes of the March 15, 2011 hearing as written; seconded by Ms. Badgley. Motion passed on roll call vote 5-0.

IV. **SWEARING OF CITY STAFF**

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

V. **OLD BUSINESS:**

None

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.

Matthew Clancy was present and sworn in for testimony.

Mr. Shelby asked Mr. Clancy if he was in agreement with the evidence presented on the violations.

Mr. Clancy stated he was not in agreement as he met with Officer Bobelak and David Hall to discuss the issues and made the necessary corrections. Mr. Clancy requested to see the evidence the violation was based upon.

Officer Bobelak testified there is video showing the violation which was played for the Board Members and Mr. Clancy.

David Hall, Public Works was sworn in for testimony.

Discussion ensued among Staff, Board Members and Mr. Clancy regarding what is being blown into the storm drainage system; what the Ordinance specifically states about endangering the proper operation of storm drainage; other businesses blowing sand into roadways and how often street sweeper works on Flagler Avenue.

Mr. Shelby asked Staff for a recommendation.

Officer Bobelak stated the City requests that no trash be blown into the streets or storm drains.

Discussion ensued among Staff and Board Members regarding the responsibility of business owners to contain trash and debris on their property; how City is handling other business owners blowing trash into streets and how the other business owners clean their property.

Officer Bobelak stated that Staff requests the Board find Clancy's Cantina in compliance.

Ms. Arvidson made a motion to find case C2011-0167 currently in compliance, Mr. Clancy to continue to make necessary corrections and failure to do so will require

appearance before the Board at a later date; second by Ms. Palmer. Motion carried unanimously upon roll call 6-0.

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 10:00 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 (1215)
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 #: 2011-03-0341
Officer B. Holcomb (1169)
03/19/2011 21:50 Sat.

Jason Temple, General Manager of McCharacter's Palm Coast and Jason Sabo, Manager of McCharacter's New Smyrna were present and sworn in for testimony.

Mr. Shelby asked Mr. Temple and Mr. Sabo if they were in agreement with the evidence presented on the violations.

Mr. Sabo stated they were in agreement that the noise could be audible over their property line.

Mr. Shelby asked Mr. Sabo what actions they will take to come into compliance and keep the noise level down.

Mr. Sabo stated he has been in contact with Officer Bobelak and is currently working to make some changes such as the relocation of a stage to be positioned away from the targeted area, purchased a noise meter, stopped the bands playing on the big stage and limited the hours of operation for the bands.

Discussion ensued among the Board, Mr. Sabo and Mr. Temple regarding the loud volume of the bands, complaints filed with the Police Department and the changes to the restaurant format.

Mr. Shelby asked Staff for a recommendation.

Officer Bobelak stated that Staff requests the Board find McCharacter's in compliance and Mr. Sabo has agreed to meet with Staff to discuss any changes necessary including changes to the City Ordinance.

Tom Valley, resident at 134 Mangrove Estates Drive, was present and sworn in for testimony.

Mr. Valley stated that this has been an ongoing problem and made an affidavit against McCharacter's in which he stands behind the comments made in the affidavit. Mr. Valley further stated he wants the City Ordinance enforced and to eliminate the noise.

Discussion ensued among the Board Members, Mr. Valley and Mr. Temple regarding the lengthy process to resolve the issues, how to bring McCharacter's into compliance, if decibel levels have been measured, pointed out the same issues for businesses on Flagler Avenue and McCharacter's will have an open discussion with neighbors.

Mr. Slayton made a motion to find case C2011-0199 in compliance, meet with Staff to make necessary corrections, work with the community and failure to do so will require appearance before the Board at a later date; seconded by Ms. Arvidson. Motion passed upon roll call 5-1 with Ms. Cooley dissenting.

VII. REPEAT BUSINESS:

VIII. ADJOURNMENT:

Ms. Arvidson made the motion to adjourn; seconded by Mr. Slayton. All agreed and the hearing adjourned at 5:18 P.M.

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING
HELD AT 4:30 P.M. – JULY 19, 2011
CITY COMMISSION CHAMBERS, CITY HALL,
210 SAMS AVE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of July 19, 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

Pat Arvidson

Katharine Cooley

Also present were Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Building Official Michael Knotek and Permit & License Technician Dorlisa Pogany.

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**

Minutes from April 19, 2011 meeting will be considered at the August 16, 2011 Meeting.

IV. **SWEARING OF CITY STAFF**

Barbara Jo Bobelak, Code Enforcement Officer, and Michael Knotek, Chief Building Official were sworn in for testimony.

V. **OLD BUSINESS:**

C2010-1105:

Douglas & Karen Hautz

311 Granada St

- A) Discarded and abandoned waste material upon the subject property in violation of §38-111. Of the City Code of Ordinances.

- B) Weeds and undergrowth upon the subject property in violation of §38-112. Of the City Code of Ordinances.
- C) Accessory structure (block wall and dilapidated fence) to exist that have not been properly maintained in good repair and structurally sound in violation of §302.7 of the 2006 International Property Maintenance Code

November 16, 2010: Board found the property in violation of §38-111., §38-112. Of the City Code of Ordinances & §307.2 2006 International Property Maintenance Code giving until November 30, 2010 to bring the property into compliance or face a fine of \$25 per day.

January 18, 2011: Board found the property in non-compliance and imposed the fine of \$25 per day.

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

Mr. Shelby asked staff for a recommendation.

Officer Bobelak stated the property was found in violation on November 16, 2010 and given to November 30, 2010 to come into compliance. The Board found the property in non-compliance on January 18, 2011 and imposed a find of \$25 per day. The property came into compliance on May 18, 2011 and recommends the Board find the property in compliance with a fine totaling \$3,400 for a total of 136 days.

Discussion ensued among Staff and the Board regarding imposing a lien when a property is in foreclosure, if it was feasible for the City to impose a lien and how many days the property was in non-compliance. Mr. McDole stated there is a case before the Florida Supreme Court currently and we will find out the priorities once a decision is rendered.

Ms. Cooley made a motion to find case C2010-1105 in compliance as of May 18, 2011 and to impose a fine of \$25 per day for 136 days for a total amount of \$3,400; second by Mr. Slayton. Motion carried unanimously upon roll call 6-0.

VI. NEW BUSINESS:

C2011-0229

Dennis Hadick

900 N Atlantic Ave

- A) Exterior surfaces that have not been maintained in good repair and free of holes, cracks, and deterioration in violation of §26-914 (2) of the City Code of Ordinances.
- B) Exterior surfaces that have not been maintained with a protective coating in violation of §26-914 (3) of the City Code of Ordinances.
- C) Exterior windows and doors shall be maintained in good repair, intact and functioning as originally intended or designed in violation of §26-914 (4) of the City Code of Ordinances.
- D) Exterior attachments, gutters, soffit, downspouts, lighting fixtures and utility connections that have not been maintained in good repair in violation of §26-914 (5) of the City Code of Ordinances.

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

Mr. Shelby asked Staff for a recommendation.

Officer Bobelak stated that the property owner has made contact with the City and would not be able to attend the meeting but will be in town on 7/26/11 at which time he will make the necessary repairs the end of the month. Officer Bobelak recommends the Board find the property in non-compliance and continue the case to the August 16, 2011 meeting.

Discussion ensued among Staff and Board Members regarding if the property was vacant, if fines should be determined now or whether to continue the case.

Mr. Owen Lovejoy of 243 Kirkland Road was sworn in for testimony. Mr. Lovejoy stated the property was almost demolished in the tornado of 1999 and in disrepair. Mr. Lovejoy questioned how long a property can be vacant, when repairs are to be completed and requests the Board to take serious and immediate action.

Discussion ensued among Staff and the Board regarding any permits issued for repairs and that previously work is completed to bring property into compliance due to complaints.

Ms. Arvidson made a motion to find case C2011-0229 in non-compliance on all four (4) items, give the property owner 30 days to come into compliance or face a fine of \$100 per day (\$25 per day for each item) until property is in compliance; second by Ms. Cooley. Motion carried unanimously upon roll call 6-0.

C2011-0357: GBL Properties LLC, 219 Washington St., Apt: A, B, C

- A) Two (2) or more rental units without the City business license tax receipt in violation of §74-146. Of the City Code of Ordinances.
- B) Electrical system hazards in violation of §604.3 of the 2006 International Property Maintenance Code.
- C) Electrical equipment installation, receptacles, and luminaries in violation of §605.1 & 605.2 & 605.3 of the 2006 International Property Maintenance Code.
- D) Plumbing system hazards in violation of §504.3 of the 2006 International Property Maintenance Code.
- E) Water system that has not been properly connected and maintained in violation of §505.1 of the 2006 International Property Maintenance Code.
- F) Openings in the exterior envelope in violation of §304.6 of the 2006 International Property Maintenance Code.
- G) Accumulation of rubbish and garbage in violation of §307.1 of the 2006 International Property Maintenance Code.

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

Mr. Shelby asked staff for a recommendation.

Mr. Shelby asked if the property was occupied in which Mr. Knotek stated it was at one time but in now vacant.

Mr. Knotek stated the structure had a small fire in the porch area and the fire procedure is that the power is disconnected if any roof or attic area is affected. Mr. Knotek further stated the tenants contacted him to reconnect the power at which time he completed an inspection. Mr. Knotek stated the building was in violation of the electrical and plumbing codes and would not permit occupancy of the building. Mr. Knotek further stated he has pulled all 3 meters and there has been no contact by the property owner. Mr. Knotek recommends a fine of \$250 per day and refer to the September, 2011 Building Trades Board for further action.

Mr. Slayton made a motion to fine \$250 per day and to refer the property to the Building Trades Board for further action; seconded by Ms. Badgley. Motion carried unanimously upon roll call 6-0.

**C2011-0380: Tomoka Docks, Inc. & Christopher & Beverly Ligotino
124 Mangrove Estates**

- A) Location of dock, walkway and bridge is different from the plans submitted for permit A2008-1461 in violation of §106.1 and §106.1.1 of the Florida Building Code.
- B) Bridge was not included in the original permit in violation of §106.1.1, §106.4 and §105.4.1 of the Florida Building Code.

Mr. Shelby asked staff for their recommendation.

Mr. Knotek gave the Board a history on the case and stated a complaint was submitted by a neighbor to the City. The City investigated the complaint to find the dock was not constructed according to plans and a bridge over a retention area was not included in the original permit. Mr. Knotek further stated that Item A has been addressed as the property owners submitted As-Built drawings for the dock and Item B is was issued in error as the dock contractor did not construct the bridge. Mr. Knotek recommends the Board find Item A in compliance and Item B is being withdrawn.

Ms. Cooley made a motion to find case C2011-0380 in compliance; seconded by Mr. Slayton. Motion carried unanimously upon roll call, 6-0.

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

- A) Semi trailer that has been converted to a temporary stage in violation of §107 Temporary Structure and Uses of the Florida Building Code.
- B) Additional outdoor seating exceeds the number of parking spaces allotted for the property in violation of §604.10. G. Exceeding the minimum number of required parking spaces of the Land Development Regulations.

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

Mr. Shelby asked Staff for a recommendation.

Mr. Knotek stated that the Building Department and Code Enforcement has made several attempts to work with the Restaurant to resolve various problems which have been unsuccessful. Mr. Knotek further stated the semi trailer is no longer temporary and needs to be removed from the property and the outdoor seating and parking requirements needs to be approved by the Planning Department. Mr. Knotek recommends that both items be found in violation and the maximum fine be assessed.

Officer Bobelak stated she visited the site today and the outdoor seating has been reduced to 49 seats but was not in compliance at the time specified and the trailer is still on the property but has been closed up.

Discussion ensued among Staff and the Board regarding a timeframe for compliance, date of compliance for outdoor seating, number of days out of compliance, legality of semi trailer to be on property, who removes untagged vehicles and recommended fine.

Ms. Cooley made a motion to find case C2011-0199 Item B in compliance as of 6/24/11 and fine them a total of \$1000 for the 25 days of non-compliance and Item A to remove the semi trailer and assess a fine of \$250 per day until property is in compliance starting immediately; seconded by Ms. Badgley. Motion carried unanimously upon roll call, 6-0.

VII. REPEAT BUSINESS:

C2011-0356: All Phases, LLC 300 Milford Place Served

- A) Construction without first obtaining the required permit in violation of §26-171. Of the City Code of Ordinances.

October 19th, 2010: Board entered an Order finding Michael Shane Miller, All Phases, LLC in violation of §26-171. of the City Code of Ordinances, no fine imposed.

November 16th, 2010: Board entered an Order finding Michael Shane Miller, All Phases, LLC in violation of §26-171. of the City Code of Ordinances, \$100.00 fine was imposed.

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

Mr. Shelby asked Staff for a recommendation.

Officer Bobelak stated Mr. Miller contacted her requesting the case be continued until the next meeting due to a conflict. Officer Bobelak further stated this was a repeat offense and recommends a fine of \$500 per day.

Discussion ensued among Staff and the Board regarding the number of times he has appeared before the board, if the permit had been issued, the amount of the fine, a compliance date and the approximate cost of permit.

Ms. Palmer made a motion to find case C2011-0356 in violation and fine \$500 per day until a permit is issued and is in compliance effective immediately; seconded by Ms. Badgley.

VIII. ADJOURNMENT:

Ms. Arvidson made the motion to adjourn; seconded by Ms. Cooley. All agreed and the hearing adjourned at 5:25 P.M.