

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
January 15, 2008
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of January 15, 2008 was called to order at 4:35 p.m. Answering to roll call:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Jay Crocker

Elliott Hoffman

Carol Kerrigan - Absent

Pat Arvidson

Keith Gerhartz

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Planner Gail Henrikson, and Administrative Specialist Claudia Soulie.

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.

Mr. Gerhartz, a new Commissioner to the Code Board, excused himself from any participation in the Ocean Palm Case as well as the property on 402 Flagler Avenue for this hearing and any future hearings due to possible conflicts of interest.

Mr. Gerhartz also stated for the record that he had personally visited the properties listed on the agenda, although he did not converse with anyone.

APPROVAL OF MINUTES

Claudia Soulie, Administrative Specialist, informed the Board about the below listed changes to the minutes:

Hearing held on ~~September 18, 2007~~ October 16, 2007:

Mr. Crocker made the motion to accept the amendment to the minutes of the October 16th, 2007 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 5-0. Mr. Gerhartz abstained.

Mr. Shelby made the motion to approve the minutes of the October 16th, 2007 hearing as amended; seconded by Mr. Crocker. Motion carried on roll call vote 5-0. Mr. Gerhartz abstained.

SWEARING OF CITY STAFF:

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

Edward H. Beazley, Attorney for Ocean Palms Beach Club, Inc. addressed the Board in regards to the Ocean Palms Beach Club, Inc. case and stated that he was aware that this case # C2007-0396 had been taken off the agenda, but asked the Board to clarify the last Board's order. Assistant City Attorney Greg McDole interjected that the property had been found in compliance and asked if Mr. Beazley wished to have a discussion item or needed a vote. Mr. Beazley wanted to renegotiate the benchmark timeline and the fine assessment and suggested that the Builder submit their timetable to the Building Department for approval. Mr. McDole stated that this order could not be changed and asked staff for their interpretation. Ms. Kunkel commented that changing the timeline or fine after the expiration of the initial deadline was at the Board's discretion.

Mr. Slayton directed Mr. Beazley to get with staff since this case would not be heard.

OLD BUSINESS:

Ms. Soulie read an addendum that listed all the cases that would not be heard by the Board:

<u>C2007-0396:</u>	Ocean Palms Beach Club, Inc.	[IN COMPLIANCE]
<u>C2007-0602:</u>	Jennifer L. Davis & Cham Bezwiechin	[IN COMPLIANCE]
<u>C2007-0679:</u>	Stuart B. Madson	[WITHDRAWN]
<u>C2007-0791:</u>	Michael Monette, Sr. & Marie J. Monette	[NO JURISDICTION]
<u>C2007-0817:</u>	Patricia H. Schlemmer & Thomas Crosby	[WITHDRAWN]

There was a brief clarification of legal terminology between the Board and staff.

C2006-0511: Anthony G. DeCamillis 402 Flagler Ave. [SERVED]

Permitting or causing to be permitted a vacant structure to exist, which has not been maintained in a clean, safe, secure and sanitary condition thereby adversely affecting the public health and safety in violation of §301.3 of the International Property Maintenance Code, 1998 Edition.

October 17, 2006: the Board continued this case to the 20th day of February 2007.

February 20, 2007: The Board continued this case until the 15th day of May 2007.

November 13, 2007: The Board continued this case until the 15th day of January 2008.

Anthony G. DeCamillis was present and sworn for testimony. Mr. DeCamillis stated that he had taken steps towards correcting the said violation and was prepared to show before and after pictures of the property.

Mr. Crocker asked staff if the Board ever found this case in violation and if not, felt it would be premature for Mr. DeCamillis to defend himself.

Mr. McDole stated that Mr. DeCamillis should be asked if he agreed or disagreed with the violation notice. Mr. Decamillis stated that he agreed in part, but felt that he had made considerable effort in trying to come into compliance.

Mr. Crocker asked staff if these violations still existed today.

Ms. Bobelak commented that the property was being maintained and the building was secured, she was not sure if it was 100% safe.

A discussion ensued between the Board and staff about the code of ordinances that regulated the minimum standards for residential and commercial buildings, whether or not the incorrect code was sited and the length this case was allowed to continue.

Ms. Bobelak stated that she was withdrawing the case for further review and the opportunity to bring it back before the Board at a later time.

Mr. Slayton dismissed Mr. DeCamillis.

**C2007-0234 Nancy W. Breiner, CO/TR 3401 S. Atlantic Avenue [SERVED]
Anna Kay Caulfield, CO/TR**

- (A) 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 in violation of §66.36.(6) of the City Code of Ordinances.
- (B) Permitting or causing to be permitted the use of a vacant lot for parking without the required site plan approval and improvements in violation of § 303.01 of the Land Development Regulations.

October 16, 2007: The Board found item "A" in non-compliance and gave the property owners 30-days to correct the violations or face a fine of \$250.00 per day for each and every day the violation exists. The Board found item "B" in non-compliance and continued this item until the 15th day of January.

Ms. Caulfield was present and sworn for testimony. She presented a receipt for the installation of a new grease trap.

Ms. Caulfield continued that she had the approved site plans, valid for two (2) years, to address the vacant lot that was being used as a parking lot.

Ms. Kunkle stated that staff agreed with item A being in compliance and that Ms. Caulfield did have approved site plans for item B, however the vacant lot was not to be used for parking by anyone, since it had not been converted to a parking lot and Ms. Caulfield would still have to reduce the number of seats in her restaurant to accommodate the available number of parking spaces.

Mr. Crocker made the motion to find the respondent in compliance with item A; seconded by Mr. Shelby. Motion carried unanimously on roll call vote 6-0.

Ms. Kunkle stressed again to Ms. Caulfield that this lot was not to be used for parking under any circumstance or she would be in violation. Ms. Caulfield stated she was under the impression that she would be able to use the lot since it was approved as a temporary shell lot and felt it would be a real hardship to her otherwise due to limited parking in this area. Ms. Caulfield was encouraged to ask Gail Henrikson about the process for obtaining a variance through the Board of Adjustments.

Ms. Gail Henrikson, Chief Planner was sworn for testimony.

Ms. Henrikson confirmed that the temporary shell lot could not be used as a parking lot unless the improvements to the site plans were done.

The Board asked Mr. McDole for directives on how to proceed with the case and what would be considered a repeat offense. Mr. McDole stated that the Board had to set a date for full compliance.

Mr. Crocker made the motion to give the respondent until January 16th, 2008 to come into compliance by ceasing the use of the vacant lot for parking or face a fine of \$100 per day for each and every day the violation exists; seconded by Mr.

Gerhartz. Motion carried on roll call vote 5-1 with Ms. Arvidson casting the dissenting vote.

C2007-0396: Joey Price 605 Downing [SERVED]

Permitting or causing to be permitted a building to exist that has not been maintained in good repair, is no longer structurally sound and sanitary and poses a threat to the public health, safety and welfare in violation of §108.1.1 of the International Property Maintenance Code, 1998 Edition.

August 21, 2007: The Board found the property in non-compliance and to bring the case back to the hearing on the 16th day of October 2007.

October 16, 2007: The Board continued this case until the 13th day of November.

November 13, 2007: The Board continued this case until the 15th day of January 2008.

Mr. Derrick Price was present and sworn for testimony.

Mr. Price gave the Board an update of their progress and stated that he was now required to get an extra drawing signed off by an architectural engineer to upgrade for a structural permit.

Ms. Bobelak mentioned that Mr. Price had been in contact with staff but due to the long history of this case recommended the Board give Mr. Price a deadline to obtain permits or start levying a fine per day.

The Board, staff and Mr. Price discussed a possible timeline for obtaining the required permits and time of construction and as to why this case had been on going for such a long time.

Mr. Crocker made a motion to give the respondent until the May 21st, 2008 hearing to come into compliance or face a fine of \$250 per day for each and every day the violation exists; seconded by Mr. Shelby. Motion carried on roll call vote 4-2, with Mr. Hoffman and Mr. Gerhartz casting the dissenting votes.

Mr. Gerhartz asked for the record to state that he was voting no, because a reasonable person would have gone to the Building Department immediately.

NEW BUSINESS:

C2007-0003: Clariece Everett 507 N. Duss St. [POSTED]

Permitting or causing to be permitted a vacant structure to exist, which has not been maintained in a clean, safe, secure and sanitary condition thereby adversely affecting

the public health and safety, in violation of §301.3 of the International Property Maintenance Code, 1998 Edition.

Mr. Slayton stated that no one was present to speak on behalf of this case.

Ms. Bobelak informed the Board that the property was posted on January 4, 2008, and the certified mailings, that were sent to the address listed on the Property Appraiser Website, had been returned unclaimed. Ms. Bobelak recommended the Board find this property in violation and give them a deadline of March 7th, 2008 to come into compliance or face a \$250 daily fine, since there had been no improvement at all.

The Board asked questions about locating the owner, possible placement of a lien or foreclosure and discussed pictures showing the actual posting of the property and case numbers, the reasonable timeframe required to obtain a demolition permit or repair of structure.

Ms. Pat Arvidson made the motion to find the respondent in violation and to bring the property into compliance by the March 7th, 2008 or pay a fine of \$250 per day for each and every day the violation exists; seconded by Mr. Gerhartz. Motion carried on roll call vote 4-2 with Mr. Crocker and Mr. Hoffman casting the dissenting votes.

C2007-0590: Tamara L. Flippin 601 Conrad Drive [SERVED]

Permitting or causing to be permitted construction (windows and re-roof) without the required permits in violation of §26-171. of the City Code of Ordinances.

Ms. Tamara L. Flippin was present and sworn for testimony. She stated that the construction without permits came about as a misunderstanding on her part and she was in the process of getting the required paperwork completed to come into compliance.

Ms. Bobelak confirmed that Ms. Flippin had been in touch with staff and recommended that the Board find her in violation and to give her until February 19th, 2008 to come into full compliance or face a per day fine.

Mr. Shelby made the motion to find the respondent in violation and give her until the February 19th, 2008 hearing to obtain the required permit(s) or face a fine of \$50 per day for each and every day the violation exists; seconded by Mr. Crocker. Motion carried unanimously on roll call vote 6-0.

C2007-0801: Lee's Air Conditioning 524 N. Dixie Freeway [SERVED]

- (A) Permitting or causing to be permitted the operation of a business (Lee's Air Conditioning, Inc.) without having paid the business license tax in violation of §74-146 of the City Code of Ordinances.
- (B) Permitting or causing to be permitted converting a single family residence into a commercial building without the required site plan approval in violation of §303.01 of the Land Development Regulations

Mr. Slayton stated that no one was present to speak on behalf of this case.

Ms. Bobelak recommended that the Board find the property in violation and continue the case until the hearing on March 18th, 2008 to allow staff to review any site plans and have the inspections done on the property.

Mr. Crocker interjected that this would not be possible since the Board did not have any evidence for item A on which to base such a finding and asked Mr. McDole for his opinion. Mr. McDole pointed out that the Code Board was not bound by the rules of evidence as stated in §162, and the testimony given by staff should be sufficient, but it was at the Board's discretion to either accept staff's account or ask for further evidence.

Ms. Henrikson confirmed that all the construction work was done without a permit; however, a revised site plan application had been turned in on January 10 or 11th, 2008 and it would take staff about one (1) month to review and sign off. The business was still being operated without the business license tax having been paid.

Mr. Slayton inquired why there hadn't been a "stop work" order issued. Ms. Kunkle answered that, now that the construction was complete, the Building Department turned the case over to Code Enforcement.

Mr. Crocker asked who was in charge of Business License taxes and was told the final authority was the City Clerk's office. Staff had access to that information and verified that the tax was still outstanding and stated it needed to be paid before a Certificate of Occupancy (CO) would be issued.

Ms. Arvidson asked for clarification what the respondent had done so far to come into compliance.

Mr. Shelby questioned the timeframe when the respondent applied for the license tax and the time it was brought before the Board, which was clarified by Ms. Henrikson. Mr. Shelby felt item A was contingent upon item B.

Mr. Crocker made the motion to continue with item A until staff brings it back before the Board; seconded by Mr. Shelby. Motion carried unanimously on roll call vote 6-0.

Mr. Shelby made the motion to find item B in violation and give the respondent until the hearing in February 19th, 2008 to come into compliance or face a \$250 per day fine for each and every day the violation exists; seconded by Mr. Crocker; Motion carried unanimously on roll call vote 6-0.

Mr. Slayton asked Mr. McDole to clarify whether or not Board Commissioners were permitted to visit case specific sites prior to the hearing. Mr. McDole confirmed that they were permitted to make site inspections, but they were not allowed to testify about what they saw.

REPEAT BUSINESS:

None

ADJOURNMENT:

Mr. Slayton made the motion to adjourn at 5:50 pm and all agreed.

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:

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