

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING HELD AT 4:30 P.M.  
FEBRUARY 19<sup>th</sup>, 2008  
UTILITIES COMMISSION, DEBERRY ROOM, 3<sup>RD</sup> FLOOR, 200 CANAL STREET,  
NEW SMYRNA BEACH, FLORIDA

The Hearing of February 19<sup>th</sup>, 2008 was called to order at 4:30 p.m. Answering to roll call:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Jay Crocker

Carol Kerrigan

Keith Gerhartz

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Administrative Specialist Claudia Soulie. Pat Arvidson arrived at 4:45 pm. Board Member Elliott Hoffman resigned on February 5<sup>th</sup>, 2008 due to a change in domicile.

**DISCLOSURE OF EX PARTE COMMUNICATIONS:**

None

**APPROVAL OF MINUTES**

**Mr. Crocker made the motion to approve the minutes of the January 15<sup>th</sup>, 2008 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 5-0.**

**SWEARING OF CITY STAFF:**

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

**OLD BUSINESS:**

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

**CASES IN COMPLIANCE WITH BOARD ORDERS**

C2007-0590

TAMARA FLIPPIN - 601 CONRAD DRIVE

C2007-0801

LEE'S AIR CONDITIONING - 524 N. DIXIE FREEWAY

**NO JURISDICTION**

C2007-0327 BRIAN HIVES - 548 N. MYRTLE AVENUE  
C2007-0802 TNS PARTNERSHIP, LLP - 705 N US HWY 1

**WITHDRAWN**

C2007-0937 THOMAS DACAR - 2 LYNN CT.

**REPEAT OFFENSE**

C2008-0063 BEACHSIDE TAVERN/MARK DAM - 690 3RD AVENUE  
FINE OF \$500.00 PAID 2.15.2008

**NEW BUSINESS:**

**C2007-0813: Carol Lukban 213 Crawford Rd. [SERVED]**

- (A) Permitting or causing to be permitted construction without the required permits in violation of §26-171. of the City Code of Ordinances.
- (B) Permitting or causing to be permitted a business operation (2 or more rental units) without having paid the business license tax in violation of §74-146 of the City Code of Ordinances.
- (C) Permitting or causing to be permitted an accessory structure to exist that has not been maintained in good repair in violation of §302.7 of the International Property Maintenance Code, 1998 Edition.

Mr. Slayton stated for the record that nobody was present on behalf of this case and asked staff for their recommendation.

Ms. Bobelak made the recommendation to continue this case until the March 18, 2008 hearing, since the respondent had been in contact with City staff and was working to come into compliance.

**Mr. Crocker made the motion to continue case C2007-0813 until the March 18<sup>th</sup>, 2008 hearing; seconded by Ms. Kerrigan. Motion carried on roll call vote 5-0.**

**C2008-0006: All About Trees and Landscaping [SERVED]  
Tim Kidwell**

PARCEL ID: 7441-38-14-2080, LEGAL DESCRIPTION: LOT 208 BLK 14 ANDREWS NEW SMYRNA PER OR 3460 PG 1902.

Permitting or causing to be permitted tree removal without the required tree removal permit in violation of §604.051 A. of the Land Development Regulations.

Mr. Tim Kidwell was sworn for testimony. Mr. Slayton asked Mr. Kidwell if he agreed with the current violation against him. Mr. Kidwell gave a brief account of his side of the story and submitted an invoice and photos into evidence.

Ms. Kunkle stated that the palms already started to sprout and re-grow, but was concerned about the Sweet Gum that was hat racked.

Ms. Arvidson inquired what the respondent had to do to come into compliance. Ms. Bobelak informed the Board that Mr. Kidwell had applied for the required tree permit and had requested an inspection.

Ms. Kerrigan asked if he had to replace any trees. Ms. Kunkle stated that staff had been in touch with the property owner, who did not want to have to replace the tree and staff was working on a replacement schedule.

Mr. Slayton asked if the contractor could have gotten a removal permit for this tree, which Ms. Kunkle affirmed.

Mr. Gerhartz stated that Palmettos would grow back very quickly, but a ten-inch Palm tree was a different story. Mr. Gerhartz asked how many Palm trees were of substantial size as opposed to being just a Palmetto and he continued that he felt that a tree being in bad shape did not eliminate the fact that a tree removal permit was needed.

Ms. Bobelak informed the Board that one (1) palm tree was measured at eight (8) and another at eleven (11) inches. Ms. Kunkle mentioned that staff did not distinguish between a Palm and a Palmetto tree, which lead Mr. Gerhartz to question Ms. Kunkle why this was not done. Ms. Kunkle answered that she was not able to differentiate between and palm and a palmetto at ground level, since this was not her line of expertise.

Ms. Kerrigan questioned why there was no double permit fee for after the fact tree removal permits. Ms. Kunkle explained that the new tree replacement ordinance was more stringent and she was hopeful that this would be a sufficient deterrent.

There was discussion between the Board and Mr. Kidwell about removal of trees without the required permit, his business being licensed and insured and other contractors not being licensed and not getting permits.

Ms. Bobelak recommended the Board found the respondent in violation of tree removal without permit and issue a repeat violation in the future.

**Mr. Crocker made the motion to find All About Trees and Firewood in violation of the ordinance, levy a \$200 fine and requested him to get the required permits for the removed trees; no second.**

Ms. Kunkle asked for the motion to include the fact that a repeat offense could bring a fine of up to \$500. A discussion ensued between staff and the Board about whether or not this needed to be reflected in the motion.

Ms. Kunkle clarified that the Code Board did not have the authority to fine Mr. Kidwell \$200 for this violation, the Board can only fine Mr. Kidwell up to \$250 if he fails to comply with the Board's order asking him to come into compliance.

The Board and staff discussed if contractors can get away with cutting down trees for the first time without a permit, the tree replacement ordinance, which can be very costly for offending contractors, who would be responsible for the replacement - the owner or the contractor and staff calculating the replacement amount.

Mr. Crocker withdrew his previous motion.

**Ms. Arvidson made the motion to find Mr. Tim Kidwell in violation and to come into compliance by obtaining the necessary permit(s) within a reasonable amount of time; seconded by Mr. Shelby**

There was additional discussion about including the wording for a repeat offense fine. Ms. Kerrigan inquired about the timeframe for coming into compliance.

**Ms. Arvidson amended her motion to find Mr. Tim Kidwell in violation and to come into compliance by obtaining the necessary permit(s) within thirty days and with the awareness that any repeat offense will carry a fine of up to \$500; seconded by Ms. Kerrigan. Motion carried on roll call vote 6- 0.**

Mr. Gerhartz asked about the proposed action items that were discussed at the Code Board/City Commission workshop on 1/16/2008. Ms. Kunkle mentioned the list was in the works and pending review/ approval and a meeting would be scheduled between Code Enforcement staff, the Police Department and the Building Department for responsibility assignment and job definition.

Ms. Arvidson wanted the record to reflect that Ms. Kunkle and Ms. Bobelak were doing an excellent job.

## **ADJOURNMENT:**

**Mr. Slayton made the motion to adjourn at 4:45 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:

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