

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

The Hearing of April 15<sup>th</sup>, 2008 was called to order at 4:35 p.m. Answering to roll call:

Carol Kerrigan, Chairperson  
John Shelby, Vice Chairperson  
Jay Crocker  
Keith Gerhartz

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Deputy Building Official Robert Pike and Administrative Specialist Claudia Soulie. Board member Pat Arvidson arrived at 4:40 pm. Board members Michael Slayton and Ken Taylor were absent.

Edward H. Beazley, Attorney for Ocean Palms Beach Club, Inc. addressed the Board and requested that case C2006-0139, Ocean Palms Beach Club be continued until the May 20<sup>th</sup>, 2008 Code Board hearing. This request was prompted by the lack of a voting quorum, since Board member Gerhartz had previously testified in this case and Mr. Beazley did not want to wait for another Board member to arrive, since his client was paying for an attorney to be present. The Board Members agreed with Mr. Beazley's request and Mr. McDole, Assistant City Attorney advised Mr. Beazley that the fines would continue to accrue.

**Mr. Crocker made the motion to continue case C2006-0139 until the May 20<sup>th</sup>, 2008 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 3-1. Mr. Gerhartz abstained.**

**DISCLOSURE OF EX PARTE COMMUNICATIONS:**

None

**APPROVAL OF MINUTES**

**Mr. Crocker made the motion to approve the minutes of the March 18<sup>th</sup>, 2008 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 4-0.**

**SWEARING OF CITY STAFF:**

Chairperson Kerrigan asked that who ever was going to present testimony for this hearing to please stand and be sworn in. Regina Lynne Kunkle, Code Enforcement Supervisor and Barbara Jo Bobelak, Code Enforcement Officer and Sam Scarbough, representative for case C2007-0003 were sworn for testimony.

## **OLD BUSINESS:**

### **C2006-0139: Ocean Palms Beach Club, Inc.**

Violation of §303.1 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior of the buildings have not been maintained in good repair, is no longer structurally sound and sanitary and poses a threat to the public health, safety and welfare located at 2601 S Atlantic Avenue.

Violation of §303.2 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior wood surfaces of the buildings have not been protected from the elements and decay by painting or other protective covering or treatment located at 2601 S Atlantic Avenue.

Violation of §303.4 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted structural members have deteriorated and are no longer capable of supporting the imposed dead and live loads located at 2601 S Atlantic Avenue.

Violation of §303.5 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the foundation walls are no longer plumb and have open cracks located at 2601 S. Atlantic Avenue.

Violation of §303.6 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior walls have not been kept free from holes, breaks, loose or rotting materials and maintained weatherproof and properly coated to prevent deterioration located at 2601 S Atlantic Avenue.

Violation of §303.7 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the roofs have not been maintained which causes the interior to be exposed to the elements including rain that is causing deterioration to the interior of the building located at 2601 S Atlantic Avenue.

Violation of §303.11 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior stairs and landing are no longer structurally sound located at 2601 S Atlantic Avenue.

Violation of §304.1 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the interior of the building is no longer structurally sound and unsanitary located at 2601 S Atlantic Avenue.

Violation of §304.3 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the interior surfaces, including windows and doors, are no longer in good, clean and sanitary condition located at 2601 S Atlantic Avenue.

**July 18, 2006:** The Board found Ocean Palms Beach Club, Inc. in violation and gave them 30-days to secure the buildings and grounds including but not limited to: roofs, decks, windows, fencing and balconies and continued this case to the August 15, 2006 hearing.

**August 15, 2006:** The Board continued this case to the October 17, 2006, hearing for review.

**October 17, 2006:** The Board continued this case to the January, 16, 2007 hearing for review.

**January 16, 2007:** The Board made a motion to give Ocean Palms Beach Club, Inc. until the February 20, 2007 hearing to secure the buildings and grounds including but limited to roofs, decks, windows, fencing, balconies, soffits and to contract with a professional pest control company to remove and treat vermin issues, as well as submit a report on their plan of action to either renovate or demolish the structure with representation from the City Building Department to provide and concur with the feasibility of the plan of action and a timeline to be completed or face a fine of \$250.00 per day for each and every day this property remains in violation.

**February 20, 2007:** The Board found the subject property had been brought into substantial compliance such that the \$250.00 per day fine would not be imposed. The Board referred the case to the Building Department for enforcement through the Unsafe or Dilapidated Structures Ordinance and the Building and Trades Board.

**November 13, 2007:** The Board gave Ocean Palms Beach Club, Inc. 3 weeks to obtain the permits or face a \$250.00 fine per day for each day they do not have the permit. The Board gave Ocean Palms Beach Club, Inc. 150 days from 11/13/07 today to secure the violations or face a fine of \$250.00 per day for each and every day the violations exist.

**Fine Totals:**

One thousand dollars (\$1,000.00) for a total of 4 days, April 11 – April 15, 2008

See above (Edward Beazley's request)

**NEW BUSINESS:**

**C2007-0003:**                      **Clariece Everett**                      **507 N. Duss Street**                      **[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.

**January 15, 2008:** The Board found the subject property in non-compliance and gave the respondent until the 7<sup>th</sup> day of March, 2008 to bring the property into compliance or face a fine of \$250.00/day for each and every day the violation exist.

**Fine Totals:**

Nine thousand seven hundred and fifty dollars (\$9,750.00) for a total of 39 days, March 8 – April 15, 2008.

Mr. Sam Scarborough, the proposed buyer of the above property presented an email to the Board from Joel Cray, Sr., co-owner of 507 N. Duss. The email authorized Mr. Scarborough to represent the respondent, who could not be present. Mr. Scarborough stated that he had helped secure the property and mow the lawn. His main purpose was to ask the Board to waive the current fines. Mr. Scarborough said that the house was about to go through probate and he assured the Board that he would be maintaining the yard until he was able to purchase the property.

Ms. Kerrigan confirmed with Mr. McDole that the Board had the authority to reduce or waive the fines. Mr. McDole stated that as long as the fines had not been recorded as a lien, the Code Board had the power to do such.

The Board asked questions such as existence of a contract between Mr. Scarborough and Mr. Cray and what had been done to bring this property into compliance.

Mr. Bobelak submitted photos showing the current state of the property, and informed the Board that the lawn had been mowed, the building secured, but the interior was still fire damaged.

Mr. Scarbough said he felt that the inside of the structure was sound and the house could be restored.

Mr. McDole advised Mr. Scarbough to obtain a written contract with the added contingency that the fines be waived and to bring such back before the Board. The Board and staff agreed to continue this case until the next hearing.

**Mr. Gerhartz made the motion to continue case C2007-0003 until the May 20<sup>th</sup>, 2008 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 5-0.**

**C2007-0626: Cham Bezwiechin 828 S. Duss Street**

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

At the hearing on the 18<sup>th</sup> day of September 2007, the Board found each property in violation and gave the owner ten (10) days to bring each property into compliance or face of fine of \$25.00 per property per day for each day the properties remain in non-compliance. Cham Bezwiechin failed to comply with each of the Board's Orders and the fines started on the 29<sup>th</sup> day of September 2007.

**Fine Totals:**

828 S. Duss Street – Five thousand dollars (\$5,000.00) for a total of 200 days, September 29, 2007 – April 15, 2008.

**C2007-0627: Cham Bezwiechin 830 S. Duss Street [POSTED]  
In Compliance 3.1.08**

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

At the hearing on the 18<sup>th</sup> day of September 2007, the Board found each property in violation and gave the owner ten (10) days to bring each property into compliance or face of fine of \$25.00 per property per day for each day the properties remain in non-compliance. Cham Bezwiechin failed to comply with each of the Board's Orders and the fines started on the 29<sup>th</sup> day of September 2007.

**Fine Totals:**

830 S. Duss Street – Three thousand eight hundred and fifty dollars (\$3,850.00) for a total of 154 days, September 29, 2007 – March 1, 2008.

**C2007-0628: Cham Bezwiechin 820 S. Duss Street [POSTED]  
In Compliance 2.04.08**

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

At the hearing on the 18<sup>th</sup> day of September 2007, the Board found each property in violation and gave the owner ten (10) days to bring each property into compliance or face of fine of \$25.00 per property per

day for each day the properties remain in non-compliance. Cham Bezwiechin failed to comply with each of the Board's Orders and the fines started on the 29<sup>th</sup> day of September 2007.

**Fine Totals:**

820 S. Duss Street – Three thousand two hundred dollars (\$3,200.00) for a total of 128 days, September 29, 2007 – February 4, 2008.

Ms. Kunkle stated that these three (3) cases were on the agenda solely for the Board's information. All properties were in foreclosure and for case C2007-0628 the foreclosure was complete and the City Commission agreed to the satisfaction of the lien. This property was now bank owned and was maintained at a satisfactory level.

**C2007-0834:            The NSB Atlantic Land Trust 2702 S. Atlantic Ave.**

Permitting or causing to be permitted a structure to exist that has been altered and has not been maintained in good working order in violation of §101.6 of the Standard Housing Code, 1997 Edition.

Stanley Hill was present and sworn for testimony.

Ms. Kerrigan asked Mr. Hill if he agreed with the violation or if he wanted to contest it.

Mr. Hill stated that he had been in touch with City staff in the relevant departments and asked the Board for time to go through permitting.

Ms. Bobelak presented pictures of the property taken in February, 2008 to Mr. Hill and the Board and stated that nothing had changed since they were taken.

Mr. Hill stated that there was a delay in the progress on his part due to personal reasons.

Ms. Kunkle informed the Board that Mr. Hill purchased the property in its present condition and was working on completing the construction.

Ms. Bobelak recommended that this case be continued until May 20<sup>th</sup>, 2008. Mr. Gerhartz felt that this case had been ongoing for too long.

Mr. Robert Pike, Deputy Building Official was sworn for testimony and asked for his professional opinion in regards to a reasonable construction timeframe to bring this property into full compliance. Mr. Pike conversed with Mr. Hill and estimated that six (6) months should be reasonable.

**Mr. Gerhartz made the motion to find the property in violation and give the respondent thirty (30) days to obtain the necessary permit(s) or face a fine of \$100 per day for each and every day the permit(s) were not obtained and six (6) months to come into full compliance or face a fine of \$250 per day for each and every day the violation continued to exist; seconded by Mr. Shelby. Motion carried on roll call vote 5-0.**

**C2008-0110:**

**Michael A. Monette, Sr. &  
Marie J. Monette**

**Cheston Street**

**[POSTED]**

**PARCEL ID: 7440-12-00-0022, LEGAL DESCRIPTION: N 133.50 FT LOT 9 EXC W 10 FT CAMARY MAUD GROVES SEC 3 S & W OF NEW ELEANORE AVE & PART OF FORMER ELEANOR AVE BETWEEN SEC 2 & 3 PER OR 4094 PGS 2639-2642 PER OR 5693 PGS 3670-3671**

- (A) Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-111. of the City Code of Ordinances.
- (B) Permitting or causing to be permitted the operation of a business without having paid the required business license tax in violation of §74-146. of the City Code of Ordinances.
- (C) Permitting or causing to be permitted the operation of a business (storage and rental) without an approved site plan in violation of §303.01 of the Land Development Regulations.
- (D) Permitting or causing to be permitted filling of low lot areas within the required yard areas without the required Stormwater Management permit in violation of §604.02 B. (3) i. of the Land Development Regulations.
- (E) Permitting or causing to be permitted recreational equipment to be used as living, sleeping or housekeeping purposes in violation of §802.06 of the Land Development Regulations.

Ms. Kerrigan stated that no one was present on behalf of this case.

Ms. Bobelak introduced pictures into evidence depicting the current state of the property. Ms. Bobelak stated that Mr. Monette had been in touch with staff in regards to site plan submittal and was informed that the deadline to submit the site plan was May 16, 2008. No further communication had occurred between staff and Mr. Monette since April 1, 2008.

Ms. Bobelak recommended giving the respondent until the July, 2008 hearing to complete the site plan, permitting process and to come into compliance.

There was a brief discussion between the Board and staff about this case having been before the Board and having to be withdrawn due to a lack of jurisdiction.

Mr. Gerhartz asked Mr. McDole if this case could be found in violation and given a time period in which to comply. Mr. McDole referred back to the site plan submittal deadline of May 16, 2008 that was given to the respondent by staff and stated it would be unusual to find the case in violation before this date had passed.

**Mr. Shelby made the motion to continue case C2008-0110 until the July 15<sup>th</sup>, 2008 hearing; seconded by Mr. Crocker. Motion carried on roll call vote 5-0.**

**C2008-0124:**

**Charles Sutherland**

**400 Lincoln Ave.**

**[SERVED]**

- (A) Permitting or causing to be permitted construction without the required building permit in violation of §26-171. of the City Code Of Ordinances.

Ms. Kerrigan stated that no one was present to represent this case.

Ms. Kunkle asked Mr. Pike for his testimony.

Mr. Pike stated that he received a call from Mr. Sutherland inquiring what could be done to remedy this situation and that Mr. Pike informed him that he could have a licensed contractor pull a permit for either an interior demolition of the wall or an interior room addition to finish the room.

Ms. Kunkle informed the Board that Mr. Sutherland was not able to pull a permit as an owner/builder since this was rental property and not his homestead.

Mr. Pike testified that Mr. Sutherland stated that Mr. James Zabik, of Zabik's Fine Carpentry & Custom Creations, LLD, performed the work. Mr. Pike continued that he gave Mr. Sutherland a list of several licensed contractors and Mr. Sutherland assured him that he would get the required permits, which had not happened as of yet.

Ms. Kunkle testified that staff had started a case file on Mr. Zabik, since he was not a licensed contractor and staff was in the process of locating him for his alleged involvement.

**Mr. Shelby made the motion to find the property in violation and give the respondent thirty (30) days to obtain the required permit(s) or face a fine of \$100 per day for each and every day the permit(s) were not obtained and six (6) months to come into full compliance or face a fine of \$250 per day for each and every day the violation continued to exist; seconded by Mr. Gerhartz. Motion carried on roll call vote 4-1 with Mr. Crocker casting the dissenting vote.**

### **DISCUSSION:**

Mr. Gerhartz felt it would be warranted to go on "field visits" in unusual cases. There was brief discussion between staff and the Board pertaining to what the Board members can and can't do during and after a site visit, possibly visiting the interior of a building and whether or not it was necessary for the Board to do site visits or to just rely on staff's recommendations.

### **ADJOURNMENT:**

**Mr. Crocker made the motion to adjourn at 5:20 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