

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING HELD AT 4:30 P.M.  
SEPTEMBER 16, 2008  
UTILITIES COMMISSION, DEBERRY ROOM, 3<sup>RD</sup> FLOOR, 200 CANAL STREET,  
NEW SMYRNA BEACH, FLORIDA

The Hearing of September 16, 2008 was called to order at 4:30 p.m. Answering to roll call:

Carol Kerrigan (Chair)  
John Shelby (Vice Chair)  
Michael Slayton  
P.J. (Pat) Arvidson  
Ken Taylor

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. Board members Jay Crocker and Keith Gerhartz were absent.

**DISCLOSURE OF EX PARTE COMMUNICATIONS:**

Ms. Kerrigan stated that Mr. Dannehower called her at home to discuss his case and that she explained to him that the Code Board Members, under any circumstances, are not allowed to discuss cases outside of the Code Board hearings.

Mr. McDole clarified that respondents are not prohibited from contacting the Board Members individually and that the conversation just had to be disclosed prior to any vote and that it was the Board members personal choice as to whether or not they wanted to talk to the respondent and, that if anything was mailed to them, it had to be made part of the record.

**APPROVAL OF MINUTES:**

**Ken Taylor made a motion to approve the minutes of the July 15, 2008 hearing; seconded by Pat Arvidson. Motion carried unanimously 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.

**CASES IN COMPLIANCE WITH THE BOARD'S ORDER:**

C2007-0779: Kevin G. Wynne  
313 Normandy Ave.

C2008-0542: Williams Real Estate & Management  
Sugar Mill Dr. & Pioneer Trail

C2008-0364: James E. Waters  
A Superior Thin Pavers, Inc.  
Sugar Mill Subdivision

**Michael Slayton made a motion to find cases C2007-0779, C2008-0542, and C2008-0364 in compliance; seconded by John Shelby. Motion carried unanimously on roll call vote 5-0.**

**OLD BUSINESS:**

**C2007-0179: Sunset Marine [SERVED]  
101 Due East**

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

May 20, 2008: Case continued until the 19<sup>th</sup> day of August, 2008 hearing.

Robert Werner and Jovanna Sian were present and sworn for testimony.

Mr. Warner testified that he and the homeowner had discussed the canopy and have decided to apply for a text amendment to increase the size of a legal boat slip.

Ms. Kerrigan asked about the time needed to accomplish this and Mr. Werner said they would apply for it the following day.

Mr. Shelby questioned whether or not Mr. Werner had engineering showing that the structure meets the wind load requirements and that the strapping had been completed. Mr. Werner assured the Board that he has the engineering and that structurally it is in compliance.

Ms. Kunkle asked Ms. Henrikson to come to the podium.

Gail Alexis Henrikson was sworn for testimony.

Ms. Henrikson testified that if Sunset Marine were to submit an application by the middle of October, they could expect the text amendment process to be completed by the end of January or first of February, 2009.

**Michael Slayton made a motion to continue this case until February 17, 2009; seconded by John Shelby. Motion carried unanimously on roll call vote 5-0.**

**C2007-0829:            Gilbert L. Dannehower 137 Cunningham Dr.**

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. Dannehower is requesting a modification to the Board's Order dated July 15, 2008.

July 15, 2008: The Board found Gilbert L. Dannehower in violation and gave Mr. Dannehower 30 days to bring the property into compliance. Mr. Dannehower failed to comply with the Board's Order and the fine of \$250.00 per day started on the 18<sup>th</sup> day of August, 2008.

August 19, 2008: The Code Enforcement Board's Hearing was cancelled due to Tropical Storm Fay.

Mr. Dannehower was present and sworn for testimony. Attorney Brett Hartley was also present and representing Mr. Dannehower.

Ms. Kunkle explained that the Board had previously found Mr. Dannehower in violation and had given him 30 days to bring the property into compliance or face a fine of \$250.00 per day. Further, Ms. Kunkle explained that she had a request for a modification to that Order from Mr. Hartley's office, which is why they are before the Board today.

Mr. Hartley explained that Mr. Dannehower is trying to come into compliance, but cannot within the time period previously given by the Board. Further, Mr. Hartley

explained that Mr. Dannehower has an erosion problem on the north end of his property that needs to be corrected, which required permitting by the Department of Environmental Protection (DEP). DEP will be visiting the property the following day for their initial survey.

Mr. Hartley further explained that Mr. Dannehower has no intentions of avoiding his responsibility in the replacement of the trees, consistent with this Board's Order.

Mr. Hartley asked the Board to consider abating the fines for a period of time, allowing Mr. Dannehower to go through the site plan and permitting process and come into compliance.

Ms. Kunkle stated that the City supports this plan of action and verified with Mr. Hartley that he is, in fact, asking for 12 months to complete the plan and Mr. Hartley confirmed this.

Mr. Hartley also stated that he would be willing to update the Board every six months, and Ms Kunkle agreed that the City was also going to recommend that the Board be provided progress reports, whether it be every six months or quarterly.

Mr. Hartley agreed to written quarterly reports in lieu of appearances before the Board, and that the Board could set a hearing anytime, did they feel as though progress was not being made.

Michael Slayton questioned the fine and Mr. McDole clarified that Mr. Hartley is requesting a modification to the time for compliance, which would in effect nullify the fine, because the Board is retroactively giving Mr. Dannehower more time to comply.

There was discussion between Pat Arvidson, and Mr. Hartley regarding the compliance schedule and quarterly reports.

Mr. Hartley stated that the first report would be submitted on December 16, 2008 and then quarterly from that point on. Mr. Hartley also confirmed that this would be done through Ms. Kunkle.

**Pat Arvidson made a motion to modify the Board's Order dated July 15, 2008 by giving Mr. Dannehower until the 15<sup>th</sup> day of September 2009 to bring the subject property into compliance and to provide quarterly written reports on the progress; seconded by Ken Taylor motion carried unanimously on roll call vote 5-0.**

**C2008-0110: Michael A. Monette, Sr. & Marie J. Monette  
Cheston Street**

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.

April 15, 2008: Case continued until the 15<sup>th</sup> day of July, 2008.

July 15, 2008: The Board found Michael A. Monette, Sr. & Marie J. Monette in violation and gave them until the 25<sup>th</sup> day of July, 2008 (10 days) to comply or face a fine of \$100.00 per day for each and every day the property remains in non-compliance.

August 19, 2008: The Code Enforcement Board's Hearing was cancelled due to Tropical Storm Fay.

Michael A. Monette, Sr. & Marie J. Monette failed to comply with the Board's Order and the fine of \$100.00 per day started on the 26<sup>th</sup> day of July, 2008 and totals \$5,300.00 as of September 16, 2008 (53 days).

Michael Monette and Marie Monette were present and sworn for testimony.

Ms. Kunkle explained that the Board had previously found Michael and Marie Monette in violation and had given them 10 days to bring the property into compliance and that the Monettes had failed to comply with this Order and a fine of \$100.00 per day started accruing on July 26, 2008, which totals \$5,300.00 as of today's date.

Ms. Bobelak testified that Ms. Kunkle and she had met with Mr. Monette on site this morning and recommended the Board find A, D, and E in compliance. Ms. Bobelak explained that she has photographs showing that the travel trailer has been closed up; the utilities have been disconnected; and no one is living in it. Further, Ms. Bobelak

testified that the pictures also show that the dirt had been removed from the property and that the weeds/undergrowth had been cleared.

Ms. Kunkle showed the pictures to Mr. Monette for verification of authenticity and submitted the pictures to the Board for their review.

The Board and Mr. Monette discussed the business license tax regarding the roll-off business; storage on the vacant lot and the need for an approved site plan.

Ms. Kunkle advised the Board that the next step in the process is for the Board to determine if they want to authorize the City Attorney to record a lien.

Ms. Kerrigan expressed concern regarding Mr. Monette's desire to sell a property that has an existing violation. Conversation continued between the Board members and Ms. Kunkle regarding the fine and/ or lien, and what effect these may have on the sale of the property.

Conversation continued between Board Members and Attorney McDole regarding clarification of the Board's Order, continuing the case, and the fine.

**Pat Arvidson made a motion to give Michael Monette and Marie Monette until the 20<sup>th</sup> day of October 2008 to bring the property into compliance and that the Board would review the case on October 21, 2008. Seconded by Ken Taylor motion carried unanimously on roll call vote 5-0.**

**VII. NEW BUSINESS:**

None

**VIII. REPEAT BUSINESS:**

None

**IX. DISCUSSION**

Ms. Kerrigan said that there were a couple of items they wanted to discuss. The first item is the emailing of the agenda and the members printing it themselves. Ms. Kunkle explained that not all of the board members could open the attachments.

Ms. Arvidson said she couldn't open the attachments that she receives from the City because it locks up her computer when the attachments open. Conversation continued regarding the programs that Ms. Arvidson has; what she needs; and what the City uses.

Ms. Arvidson offered to pick up her agenda, but Ms. Kunkle said that it is staff's responsibility to see each of the members receive an agenda.

The conversation ensued regarding this issue.

Ms. Kunkle explained that Ms. Soulie has three boards she is responsible for and that to do something different for each member would be time consuming.

Discussion continued regarding *Going Green*. Mr. Taylor said that if the City wanted to support the Mayor then the agendas should be emailed, but that the City is not giving her much support in that regard, and that the City should send an IT person to Ms. Arvidson's home to see that she has the appropriate program necessary to open the City's email attachments which would save a lot of money in the future.

Mr. Taylor further advised that he thought under the rule, if the board members incur expenses doing this job, then they could apply for reimbursement.

Ms. Kerrigan brought up the second item of discussion, which is the status of the lot maintenance ordinance.

Ms. Kunkle explained that she had not heard anything recently regarding this issue. Discussion continued between the Board members and Ms. Kunkle. That this was the ordinance that Ms. Kerrigan and she were going to attend a City Commission meeting and that the ordinance was pulled from that agenda so it could be written in ordinance form and then taken before the City Commission. Further, Ms. Kunkle explained that the City Commission had directed the City Manager to cut the budget for the third time and that this would be a very expensive program to get in to and money the City would not get back in most cases.

Ms. Arvidson asked about the priority list that was discussed at the joint workshop earlier this year.

Ms. Kunkle explained that she had received completed lists from Vice Mayor Richenberg, Ms. Arvidson, and Jay Crocker.

Ms. Kerrigan stated that the Board had just discussed the priorities and did not recall any others. Ms. Kerrigan further stated that she was not interested in the citation process.

Ms. Kunkle said that she would email the list to each of the members again.

**IX. ADJOURNMENT:**

Ms. Kerrigan moved to adjourn at 5:14 p.m. 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