

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
OCTOBER 21, 2008
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of October 21, 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
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. Board member Ken Taylor was absent and Jay Crocker had resigned his position on the New Smyrna Beach Citizens' Code Enforcement Board on October 15, 2008, effective immediately.

DISCLOSURE OF EX PARTE COMMUNICATIONS:

None

APPROVAL OF MINUTES:

Ms. Arvidson made a motion to approve the minutes of the September 16, 2008 hearing; seconded by Mr. Shelby. 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:

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 15th day of July, 2008.

July 15, 2008: The Board found Michael A. Monette, Sr. & Marie J. Monette in violation and gave them until the 25th 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 26th day of July, 2008 and totals \$5,300.00 as of September 16, 2008 (53 days).

September 16, 2008: The Board gave Mr. Monette until the 20th day of October, 2008 to come into full compliance.

October 10, 2008: Mr. Monette called for a re-inspection. Property is in compliance. Fine totals \$7,600.00 for a total of 76 days.

Mr. Michael A. Monette and Marie J. Monette were sworn for testimony.

Mr. Monette stated that he was in the process of selling the property.

- B) Permitting or causing to be permitted the installation of electric without the required electrical permit in violation of §26-200. of the City Code of Ordinances.
- C) Permitting or causing to be permitted an encroachment upon the City right-of-way in violation of §70-38. of the City Code of Ordinances.
- D) Permitting or causing to be permitted a business operation (Heavenly Bar-B-Que) without having paid the business license tax in violation of §74-146. of the City Code of Ordinances.
- E) Permitting or causing to be permitted the use of prohibited signs in violation of §604.14 B. of the Land Development Regulations.

Case withdrawn by staff.

Mr. Carlton, owner of Heavenly Bar-B-Que Restaurant, was present and insisted on being heard, even after being advised by the Board this may compromise his position in the future. Mr. Carlton stated that he would take a chance on compromising his position.

Staff stated that Mr. Carlton was currently in touch with the City's Fire Marshall to get his occupational license.

Mr. McDole reiterated that the case had been withdrawn and the Board was under no obligation to hear it.

The Board suggested that Mr. Carlton contact the City Manager and/or Mayor about his concerns.

C2008-0387:

**John H. Simmons
545 Charlovix St.**

[POSTED]

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

No one was present on behalf of this case. Ms. Bobelak presented pictures to the Board of the vacant subject lot and stated that the owner was deceased and no taxes had been paid for a few years.

Mr. McDole asked if the tax certificates had been purchased and Officers Bobelak and Kunkle both stated they had not seen any evidence to that effect.

Mr. Gerhartz inquired if staff was able to locate a next of kin or executor, Officers Bobelak and Kunkle both responded they had not.

Mr. Gerhartz asked if this was a complaint initiated case, which Ms. Bobelak affirmed.

Ms. Kerrigan inquired when this case was first brought to staff's attention and was informed that the complaint came the first part of August.

Mr. Slayton made a motion to find case C2008-0833 in violation of §604.14 C. of the Land Development Regulations and to give Odyssey until October 26, 2008 to come into compliance or face a fine of \$75.00 per day for each and every day the violation continued; seconded by Mr. Shelby. Motion carried unanimously on roll call vote 5-0.

C2008-0893:

**CRF-NSB, LLC
1851 SR 44**

[SERVED]

Permitting or causing to be permitted more than the allowable number of real estate signs upon the subject property in violation of §604.14 C. of the Land Development Regulations.

No one was present on behalf of this case.

Ms. Bobelak submitted pictures she and Ms. Kunkle had taken earlier that day depicting the signs in violation. Ms. Bobelak testified that the respondent had been in touch with the Zoning Department but the respondent had taken no further action to come into compliance.

Ms. Bobelak recommended the Board find them in violation and levy a per-day fine after October 26, 2008.

Mr. Gerhartz made a motion to find case C2008-0893 in violation and to give Odyssey until October 26, 2008 to come into compliance or face a fine of \$75.00 per day for each and every day the violation continued; seconded by Mr. Shelby. Motion carried unanimously on roll call vote 5-0.

C2008-0894:

**Steve Burkhead
Pecan Street (vacant lot)**

Permitting or causing to be permitted discarded and abandoned waste material upon the subject property in violation of §38-113. of the City Code of Ordinances.

Officer Bobelak informed the Board that this case is in compliance.

VIII. REPEAT BUSINESS:

None

IX. DISCUSSION:

Priority Ranking -

Per the Board's consensus this item was moved to a future agenda.

Mr. Gerhartz complemented City staff on their efforts in enforcing the sign ordinance.

X. ADJOURNMENT:

Mr. Gerhartz moved to adjourn at 5:01 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