

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD HEARING
HELD AT 4:30 P.M. - February 17, 2009
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of February 17, 2009 was called to order at 4:30 p.m. Answering to roll call:

John Shelby (Vice Chair)
Michael Slayton
P. J. (Pat) Arvidson
Keith Gerhartz
Ken Taylor
Katharine (Kathy) L. Cooley

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Administrative Specialist Claudia Soulie. The position of the chair is currently vacant.

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.

None

APPROVAL OF MINUTES:

Minutes of the Code Board Hearing from January 20, 2009.

Mr. Taylor made a motion to approve the minutes of the January 20, 2009 hearing as written; seconded by Ms. Arvidson. Motion carried unanimously on roll call vote 6-0.

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:

N/A

OLD BUSINESS:

Vice Chairman Shelby asked for the first case to be called. Ms. Soulie informed the Board that Case C2009-0041 under New Business is in compliance and proceeded to call case C2007-0179.

C2007-0179:

**Sunset Marine
101 Due East**

[SERVED]

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 19th day of August, 2008 hearing.
September 16, 2008: Case continued until the 17th day of February, 2009 hearing.

Robert Werner, Sunset Marine and Jovanna Sayan, representative for the owner of 101 Due East, were present and sworn for testimony.

Vice Chairman Shelby asked for an update.

Mr. Werner and Ms. Sayan stated that they had applied for a text amendment.

Ms. Kunkle explained that on May 20, 2008, the Board continued the case until August 19, 2008 to allow the owner to apply for a variance and Ms. Sayan explained they decided against the variance per recommendation by their lawyer. Further Ms. Kunkle explained that on September 16, 2008, the Board continued the case until today to allow the owner to apply for a text amendment, and that Ms. Henrikson was present for testimony.

Vice Chairman Shelby asked for staff's recommendation.

Ms. Kunkle said that the Board had two options. The Board could either continue the case again or, because of the length of time this case had been before the Board, they could order the property into compliance until such time as the owner completes the text amendment process or whatever process they decide to go through.

Mr. McDole asked Ms. Kunkle if there had been a finding of non-compliance and Ms. Kunkle said that the Board did need to make a finding of non-compliance.

Mr. Shelby asked if the respondent had to remove the awning in order to come into compliance or ask for a modification of the Land Development Regulations (LDR) if they wanted to keep the awning. Ms. Kunkle said that was correct.

Mr. Werner confirmed that the covered area is greater than what is allowed.

Mr. Gerhartz asked for the dimensions and it was confirmed to be twice the allowable size.

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

Ms. Henrikson testified that she received a complete application, the application fee and the request for a text amendment today. Further, Ms. Henrikson explained that she had quickly reviewed the plans prior to the hearing and noted some additional issues that would have to be addressed. The dimensions on the plans were 600 square feet. An additional issue was the structure being more than the allowable 15 feet above the mean high water level and with the canopy; she needed to know the present total height. Ms. Henrikson also provided the Board with a timeline for the text amendment process.

Mr. Gerhartz asked what size was currently allowed by the LDR and Ms. Henrikson responded that it was 360 square feet for a single covered boat slip and 600 square feet for two boat slips. Ms. Henrikson also stated that she considered the canopy that was there now to be a single boat slip.

Mr. Gerhartz asked if this was un-permitted activity and Ms. Kunkle confirmed that the canopy was un-permitted.

Mr. Werner stated that a permit was not required at the time the canopy was installed and it was later that they decided it had to be permitted.

Mr. Gerhartz asked who made that decision, and Mr. Werner said the way he understood it was that a non-permanent structure that could be removed did not need to be permitted. Mr. Werner said that it was determined later that any non-permanent structure had to be permitted.

Mr. Gerhartz asked who it was that told Mr. Werner it did not require a permit and Mr. Werner said the City did years ago and that he spoke with Rick McFadden, Chief Building Official, when this first came about, but did not recall who he spoke with originally.

Mr. Shelby asked if Mr. Werner was saying that when he started construction, a permit was not required, and Mr. Werner said yes.

Ms. Kunkle said that the City had Board minutes with testimony from Mr. McFadden stating that a permit was not required.

Mr. Slayton asked if there were still height and size restrictions on temporary structures, and Ms. Kunkle stated yes.

Mr. Werner commented that there was no such thing as a temporary structure any more.

Mr. Gerhartz questioned why the respondent did not go through with the variance process, and Mr. Werner said they had to prove a hardship and that covering a large boat was not a hardship.

Mr. Gerhartz suggested that if the respondent was denied the text amendment, to pursue a variance, and Mr. Werner said they would pursue whatever they could and Ms. Sayan said they would consult their attorney.

There being no further questions, Mr. Shelby asked when this case first came before the Board, and Ms. Kunkle said it was May, 2008 and first came to staff's attention in March 2008.

Vice Chairman Shelby asked Mr. Werner and Ms. Sayan if they agreed that the violation existed.

Mr. Werner stipulated to the violation.

Ken Taylor made a motion to find the subject property in non-compliance and gave the owner until June 1, 2009 to bring the property into compliance or face a fine of \$250.00 per day; seconded by Pat Arvidson. Motion carried unanimously on roll call vote 6-0.

PRESENTATION BY COMMUNITY REDEVELOPEMENT DIRECTOR

Kevin Fall, Community Redevelopment Agency (CRA) Director provided a short presentation on the proposed joint efforts between the City's Code Enforcement staff and the CRA staff.

Mr. Fall explained to the Board that the CRA is contracting with Glatting Jackson, to perform the Community Redevelopment Plan update, reviewing the City's ordinances, including the Land Development Regulations and the effects on the CRA districts. Further, Mr. Fall defined the CRA boundaries; explained the common goals of the CRA and code enforcement; and the goals the CRA would like to accomplish within the next five years.

Mr. Fall provided the Members of the Board with a schedule of meeting dates and invited the members to attend and participate in the workshops.

DISCUSSION:

Ms. Arvidson asked Mr. McDole for clarification as to a Board member's roll when participating in a public activity or meeting.

Mr. McDole explained that the Board was an arm of City government established pursuant to statute with specified powers to act as a quasi-judicial capacity.

Ms. Arvidson asked if she represented the City and Mr. McDole said she, as an individual did not, but the Board as a whole did.

Ms. Arvidson asked if she could attend the Community Redevelopment Agency (CRA) meeting and represent the Board. McDole said she could not, but could attend as a citizen.

Mr. Gerhartz asked if the Board could vote to send Ms. Arvidson as a representative. Mr. McDole said the Board did not have legislative powers.

Ms. Arvidson requested additional information as to what authority or responsibility she had outside of the meeting chambers.

Mr. McDole said that when she attended a public meeting, she could identify herself as a Code Enforcement Board member, but she would not be able to represent the Board.

Discussion continued between Mr. McDole and Ms. Arvidson.

Ms. Kunkle added that, if the Board wanted to participate with the CRA, she could set up a workshop between the two Boards.

Mr. McDole stated that the Code Board, being a quasi-judicial Board, had to meet and discuss cases during the set meeting time and date, as this was a publicly advertised hearing.

Mr. Gerhartz advised Ms. Arvidson that, as a private citizen, one had the right to voice one's opinion, as long as it did not concern a case.

Ms. Cooley said that having come from state government, she felt that you needed to make sure that everyone knew you were there as a private citizen but that you were a member of a certain Board and that you were not representing them.

Ms. Arvidson said she was just concerned that it would reflect poorly on the Board.

Mr. Shelby said that as Board members they had to discuss topics that they may disagree with as private citizens, but that the law and regulations had to be followed.

Ms. Cooley recommended full disclosure based on the sunshine law and to never hold anything back.

Mr. Gerhartz suggested clarifying that you were not making a statement on behalf of the Code Board or the City but as a private citizen.

ADJOURNMENT:

Mr. Taylor made the motion to adjourn and all agreed. The meeting adjourned at 5:21 pm.

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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