

CITIZENS CODE ENFORCEMENT BOARD

NOTICE OF HEARING

August 21, 2007

Members:

Michael E. Slayton (Chairperson)

John Shelby (Vice Chairperson)

Maggie Hawk

Jay Crocker

Elliott Hoffman

Carol Kerrigan

Thomas Wheeler

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of a hearing of the Citizens Code Enforcement Board, to be held on Tuesday, August 21st, 2007 at 4:30 P.M. in the **DEBERRY ROOM, 3RD FLOOR COMMISSION CHAMBERS, AT THE UTILITIES COMMISSION, 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA,** for the consideration of the following:



Michael E. Slayton, Chairperson
Citizens Code Enforcement Board

Code Enforcement Agenda
Alexis

C2007-0574:

TT of NSB, Inc.

[SERVED]

Violation of §604.051 A. of the Land Development Regulations by permitting or causing to be permitted tree removal (cedar) without the required permit located at 1300 N. Dixie Freeway.

REPEAT BUSINESS:

C2007-0573:

TT of NSB, Inc.

[SERVED]

Violation of §604.05 I. of the Land Development Regulations by permitting or causing to be permitted landscaped areas and irrigation systems to exist that are not being properly maintained in perpetuity located at 1300 N. Dixie Freeway.

Violation of §604.051 B. (8) of the Land Development Regulations by permitting or causing to be permitted nine (9) replacement trees that were not maintained in good condition and died within a year located at 1300 N. Dixie Freeway.

BOARD MEMBER REPORTS:

ADJOURNMENT:

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:

Cindy Watson
Administrative Specialist
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2265
Fax: 386.424.2148

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD WORKSHOP
HELD AT 5:00 P.M.
MAY 30, 2007
CITY HALL, 210 SAMS AVENUE,
NEW SMYRNA BEACH, FLORIDA

The following were in attendance at the Workshop held on May 30th, 2007:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Maggie Hawk

Jay Crocker

Elliott Hoffman

Carol Kerrigan

Thomas Wheeler

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, and Administrative Specialist Jennifer Gill.

Ms. Kunkle started the meeting by explaining that this workshop was being held to be sure everyone was on the same page and go over the items to be discussed with the City Commission at the proposed workshop.

Ms. Kerrigan addressed the Board regarding the gentleman from Hill Street that had testified at a hearing about properties on Hill Street and expressed his opinion regarding the code enforcement staff being complaint driven as opposed to being proactive.

Mr. Shelby said he had spoken with Commissioner Richenberg and that what he wanted from this Board is, briefly what they think is wrong and what they need to do to make it right.

Mr. Shelby expressed his views regarding the code enforcement board and that the board is too soft, very slow, gives too much time for compliance, lets too many cases slide in time, and bends over backwards to be extremely lenient.

Mr. Shelby further explained that he had evaluated other areas in Florida and feels that a 29-day rule seems to be a common practice and works well.

Mr. Shelby also thought that the cases on the agenda should be prioritized to some extent. The cases that are in compliance should be accompanied by an affidavit and addressed in bulk form. The cases, with the respondents in attendance should be heard first, and the cases where no one is present should be heard last. There should also be a tracking system.

Mr. Shelby made sure everyone understood that he was not recommending a change to the existing system but that there are other ways of processing the complaints.

Mr. Shelby expressed his concerns regarding whether or not the Board actually knows all of the cases that are repeat cases. Mr. Crocker agreed and asked if Mr. Shelby was suggesting that staff is holding on too long before bringing the cases to the Board. Mr. Shelby agreed that this is a true statement.

Conversation continued and Ms. Kunkle explained that code enforcement has always been citizen friendly and that the City Commission only wanted compliance, never the money or the property.

Mr. Crocker explained that the City has a different City Commission and given finances the way they are getting ready to be, thought that the City Commission would want the Board to use their power to recoup some of the costs incurred in the code enforcement effort.

The conversation continued between board members and staff regarding the recovery of the administrative cost involved in the processing of cases.

Ms. Kunkle explained that the previous City Commission wanted code enforcement to have teeth and when the Board levied fines they would not reduce the fines to zero dollars and at least recoup staff time.

Further discussion continued between Board Members and Ms. Kunkle regarding actual cost verses a flat schedule, the additional time involved in keeping track of actual cost, estimated time and ballpark figures.

Mr. McDole advised the Board that staff might be able to average their time.

Mr. Shelby initiated discussion relating to a 24 to 48 hour compliance schedule on health, safety, and welfare cases and that the board is too lenient on the definition of safety and that staff has not been proactive.

Mr. Shelby also expressed his opinion regarding signs and that he felt too much time is spent on picking up signs and that portable signs need a fine attached.

Ms. Kunkle explained that staff has stopped picking up signs with the exception of snipe signs because there is no one to contact or take to the board and that

the realtor signs and the ones that have a name or any type of identification attached to it, Barb is sending notices and making them responsible for picking them up.

Mr. Shelby said that he saw in his research where even though a violator has complied with the notice of violation, the code officer still takes them to the board so that a repeat offense and fine could be established.

Conversation continued concerning the disposition of some of the complaints and when cases are resolved the Board never knows that the case even existed. Mr. Crocker expressed his concern regarding cases that are withdrawn from the docket because they are in compliance, but that they weren't. Further discussion continued regarding staff time and money to get cases into compliance and that the Board ought to be able to at least levy costs on them instead of making the tax payer pay the cost of processing it.

Ms. Kunkle explained that portion of Chapter 162 of the Florida Statutes to the Board which addresses what and when the Board can hear a case.

Ms. Hawk expressed her concern that in some instances, the Board would not even know that a case existed.

Mr. Crocker explained that he felt that the way the statute was written it just meant the Board could not hear the case but it does not mean the Board cannot hear the case and make a finding that they were in violation in order to set it up for a repeat violation.

Discussion ensued regarding the interpretation of Chapter 162 of the Florida Statutes.

Mr. McDole advised the Board that after you give the notice and reasonable time on a first offense, and the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction the case may be presented to the code board even if the violation has been corrected, which means there are only the two scenarios where you can take it to the Board and that is if it recurs after correction or it's not corrected by the time of the hearing for a first offense.

Mr. Crocker asked that if after that hearing they violate again, the Board cannot get them for a repeat violation because the Board never made the finding in the first place.

Mr. McDole further explained that the Board has to take a hard line on the cases and if they are one day late or recurs at any time prior to the hearing, the Board has to find them in violation and that the Board has to take a hard line and say, wait a minute, you know I corrected it today or whatever, then the Board says it is too late, you're in violation.

Mr. Shelby and Mr. Crocker clarified that if staff gives the respondent 5 days to comply and they do within the 5 days, then the Board cannot hear the case, but if they take 6 days, the Board can hear it even if they are in compliance.

Mr. Slayton questioned Ms. Kunkle by asking if a respondent is given 10 days to come into compliance and they take 15 days, is the case still always brought to the Board. Ms. Kunkle's response was no, and Mr. Slayton replied that maybe what the Board is saying is that maybe staff needs to so the Board can make a finding of violation so the respondent is then subject to a repeat offense.

Mr. Crocker added that the City could also recoup the costs for the first violation.

Ms. Kunkle further explained that the statute requires staff to give reasonable time which varies depending on the nature of the violation; and discussion continued regarding the notice requirements in the statute that has to be met and that the notice has to be written and not given verbally and they have to be served by certified mail, posted or advertised.

Mr. Shelby says there is a lot of stuff out there that needs to be cleaned up and it's not getting cleaned up.

Mr. Shelby brought up discussion about the fines and liens that code enforcement has collected and felt that if the Board had a nice simple system where this is really documented, if nothing else, it would not only justify staff's jobs but protect them.

Conversation continued regarding the types of cases the board members want brought before them and the cases that the members did not want to see. There was a general consensus among the board members that staff should provide the board with more information regarding the status of complaints and cases.

Ms. Hawk asked if signs are a big issue. Conversation continued between staff and the Board members regarding the sign issues.

Mr. Shelby said that the Board will come up with a procedure as to how they want the sign issues handled and the Board will tell the City Commission how they want it handled

Ms. Hawk asked staff questions concerning vehicles parked in yards, signs, trash, and lot mowing.

Ms. Kunkle explained that neighborhoods tend to set their own standards and that one standard does not necessarily fit all neighborhoods.

The board and staff discussed the proposed Lot Maintenance Ordinance and Ms. Kunkle advised that she would email it to the board members for their review and comments.

Mr. Shelby brought up that formal rules of evidence do not apply and will not apply.

Mr. McDole agreed that is what the statute says.

Mr. Crocker asked about authentication of a photograph and Mr. McDole replied that staff still had to testify that they took this picture and make it a part of the record.

Board members discussed whether or not they could make a complaint and remarked about potential violations they see that never come before the Board.

Ms. Kerrigan expressed her concern regarding staff's comments about how busy code enforcement is, but was surprised that the March and April agenda had so few cases on it, when she had expected more, and then May's hearing was cancelled altogether.

Ms. Kunkle explained that staff has over 300 complaints for the year and last year was over 900. Staff sees approximately 900 to 1200 complaints per year and it has decreased to a little over 900. Last year only about 35 new cases came before the Board.

Mr. Crocker calculated this to be approximately 75 cases a month that are coming into staff.

Ms. Bobelak explained the process and that the Notice of Violation is mailed and that the Notice of Hearing is mailed almost a month prior to the hearing so the respondents end up with approximately 45 days to comply. Ms. Bobelak further explained that she calls the respondents and visits with them and that it is not that the work is not getting done.

Ms. Kunkle also added that staff is faced with a whole new way of doing code enforcement at the Board's request. That staff has been told not to bring the cases if they are not going to ask for any action, so staff goes through the agenda and those cases come off.

Mr. Hoffman brought up the subject of travel time, the cost of gasoline, growth of the City, and accountability.

Mr. Hoffman also addressed the Lot maintenance issues and the fact that if you do not cut your grass in Philadelphia, the City will cut it and bill you.

Mr. McDole explained that the Florida Constitution says that City's can not fine unless they have specific statutory authority so this gives you authority to fine and lays out all the guidelines and that further, constitutionally, you cannot levy a fine, and that only courts can do that or boards authorized by statute.

Ms. Kerrigan addressed the building issues everyone sees around town and felt it is obvious that there is a disconnect between code enforcement and the building department.

Board members and staff continued the discussion regarding the condition of some of the buildings within the City, property ownership, and how complicated some cases can be.

Ms. Kerrigan expressed a concern as to whether or not property owners are even getting their notices.

Ms. Kunkle questioned the Board in relationship to their behavior, as to where staff's incentive is to take cases to the Board, even if staff were to be proactive. That the Board needed to tell the respondent to bring the property into compliance, and in the case of a structure, whether the respondent demolished it or rehabilitated it was not the Board's problem. Further Ms. Kunkle explained that staff is trying to do their job, but needed support from the Board.

Ms. Hawk asked at what point have you given the people enough rights?

Ms. Kunkle responded that all you are required to give them is due process and that the victims are the neighbors.

Mr. Hoffman brought up a health, safety and welfare issue regarding structures that are a health hazard and that the respondent is given a certain amount of time and in the case of the City of Philadelphia, they come in and demolish it and if the property owner wants it back, then they have to pay for it. They don't waste time with it.

Ms. Hawk asked that at what point does the Board say I have done enough, you have had your say, you have had your chance, fix it or tear it down.

Ms. Kunkle stated that the statute says you give them reasonable time and that is it, then it is done.

Ms. Hawk said that is awfully vague.

Ms. Kunkle responded that she did not see anything vague about it.

Mr. Crocker said that he did not think the problem is at the Board's level and that it is not like the Board is lenient

Mr. Shelby spoke about the tracking system and that all complaints are logged on it.

Ms. Kunkle also explained that staff has an excel spreadsheet for complaints.

Mr. Shelby felt there is a miscommunication because of the number of cases out there, and that maybe staff felt the Board does not want to hear them and the Board has the feeling staff is holding back and that maybe what the Board needs to see is what the backlog is. Mr. Shelby felt that it would be nice to see on a case, a little information on the cases such as when staff received it and how long staff worked on it.

Ms. Kunkle reminded the Board that the complaints are handled on a staff level.

Ms. Bobelak also reminded everyone that staff cannot provide the Board with all of the violations that could possibly come before them at a future date.

Ms. Kunkle agreed with Ms. Bobelak and explained to the Board that they could not have prior knowledge of a complaint and that they have to base their decision on testimony and evidence at the hearings.

Mr. Crocker questioned Ms. Kunkle's objections to the Board knowing about the violations that staff is handling.

Ms. Kunkle told the Board that she is not objecting, but simply asking what it is the Board is looking for.

Mr. Crocker clarified that Ms. Kunkle is objecting because she is saying it would somehow compromise the Board because they would have knowledge of cases that are not before them.

Ms. Kerrigan explained that people talk to Board members and they say that even though they have called, code enforcement is not doing anything and Ms. Kerrigan advises them to call again.

Mr. Crocker reminded the Board that if they talk about a particular violation, that's what the whole disclosure of Ex Parte Communications is at the beginning of agenda that they started doing in the last 6 months or so.

Ms. Kerrigan reiterated that these are people she has known for a long time and that she feels to see 2 agendas with very few cases on it and a 3rd hearing that is cancelled.

Ms. Kunkle again, explained that neighborhoods set their own standards and that staff, or the Board cannot make the determination that something needs to be done in that particular neighborhood. Ms. Kunkle further explained that is up to the residents of each neighborhood, and that it is not acceptable to park a boat on the lawn in some neighborhoods, where as other neighborhoods find it acceptable to park the boat and the RV in the yard. If no body cares and no body is complaining, they have set their own standards. Staff cannot force their taste, or the Board's taste on the residents, and that staff lets the neighborhoods set their own standards within reason.

Mr. Shelby addressed the ordinances not taking into consideration neighborhood policy, and that if we have an ordinance that says you can only have so many vehicles in your front yard, more than 35 feet, it does not matter what neighborhood it is. It is either black or white.

Mr. Crocker clarified Ms. Kunkle's statement by saying staff is using their discretion to enforce a particular rule because it meets that particular neighborhood's standards.

Ms. Kunkle agreed and explained that it is because no one in the neighborhood has called and complained and that staff works on a complaint basis.

Mr. Slayton asked that when staff if in the field they do not actually go around and see something and bring a case against them.

Ms. Kunkle responded by saying no.

Mr. Wheeler asked if staff receives one call, whether an investigation is conducted.

Ms. Kunkle assured the Board that staff does in fact investigate.

Mr. Wheeler continued his questioning regarding historic residences that have been demolished, and the fact that staff had stated they had not received any complaints regarding those structures. Further conversation between Mr. Wheeler, Mr. Slayton and Ms. Kunkle consisted of operable and inoperable vehicles parked on lawns with and without current tags.

Mr. Crocker, Ms. Hawk and Ms. Kunkle discussed commercial vehicles parked at a residence. Ms. Kunkle explained that contractors are required to have their names and their state license number on their vehicles and Mr. Slayton said it was his understanding when he got his license there could be no outward sign of a business.

Ms. Kunkle explained that you cannot change the residential character of your home by adding a separate entrance or placing a sign on your home, but that

parking your vehicle with Michael E. Slayton Construction at your home is absolutely allowed. Ms. Kunkle further explained that the City allows in-home offices, for contractors as an example, using up to 20% of the cumulative floor area, which gives you office space for your computer, telephone, desk, etc.

Conversation continued and Ms. Kunkle told the Board members that if they are approached with a complaint to please tell the complainant to call the code enforcement hotline at 424-CODE.

Ms. Gill added that she checks the voice mail every day and writes up the complaints.

Discussion continued among the Board members regarding code enforcement and the building department working together and meeting the requirements for reasonable time for compliance.

Mr. Wheeler said he felt Ocean Palms is a prime example, even though it was before I was on the Board, but I lived down there and I have been by it a million times and that was a problem that was overlooked and went way beyond a reasonable time. We need to be proactive, but to a certain extent. You have to be reasonable with the public too. Daytona is really aggressive and I don't think that's where (inaudible).

Mr. McDole explained that Daytona Beach has over \$3,000,000.00 in unenforced code enforcement fines. They have never filed one foreclosure action in 20 years. So they are not that tough and if anything is ordered torn down it has to go to the Commission and the Commission orders it torn down due to administrative procedure.

Mr. Crocker asked if there was a point in time where action taken may have saved the Alba Court. The violations were obvious and had staff have been proactive they could have prevented it from deteriorating to the point where it was unsalvageable.

Conversation continued between Board Members and Ms. Kunkle regarding the condition of the Alba Court Inn and whether or not something could have been done had staff been allowed to be proactive. Ms. Kunkle further explained that the owners voluntarily gave up their hotel license, which made the facility a private residence, and had the owners refused to let staff inspect the interior of the home, that an inspection warrant could not be obtained for an owner-occupied residence regardless of whether staff was proactive or complaint driven.

Mr. Slayton asked if it is the City Commission that is not allowing staff to be proactive?

Ms. Kunkle responded that it has always been the City Commission's policy that code enforcement is complaint driven.

Mr. Slayton felt that this would be a good issue to bring up at the workshop with the City Commission. Mr. Crocker added that the Board would ask the City Commission to authorize management to authorize code enforcement to be more proactive.

Further discussion between the Board Members included more aggressive code enforcement with regards to fines and obvious violations that need to be addressed.

Mr. Wheeler addressed 301 Faulkner 222 and 214 Flagler Avenue and the fact they have been demolished.

Mr. Shelby added the Bauer's house that was vacant for a number of years.

Mr. Wheeler said that he can see property rights, but to a certain extent and that the Board does not need to nit-pick everything and have Barbara and Lynne working 200 hours a week, but major problems need to be addressed.

Further discussion took place between Chairperson Slayton and Ms. Kunkle regarding Dunn Lumber, ownership of the properties, state law, and jurisdiction over FEC. Mr. McDole informed the Board that another company is going to buy the property.

Board Members talked about getting beat up by the general public and neighbors and the frustration they feel.

Ms. Kunkle explained that everyone has preconceived ideas of how code enforcement should work and that normally this is based on what the public knows from about the communities they lived in prior to moving to Florida.

Ms. Hawk expressed her concerns regarding the types of cases that come before the Board and would like to see more blatant violations in lieu of the smaller cases where the respondents end up stipulating.

Ms. Hawk continued by addressing overgrown lots, tree trimming without a permit (topping or hat racking), trash and debris.

Ms. Kerrigan shared her feelings on the 60-inch tree case that was previously before the Board. Further discussion took place between the Board Members relating to the City's ordinances, the calculation of the replacement trees, irreparable and irreversible damage, and strengthening the ordinances to include more stringent penalties.

Mr. McDole reminded the Board that the City has adopted Chapter 162 of the Florida Statutes.

Ms. Kerrigan brought watering violations and that the County has, for the fourth time since 2001, approached the City to adopt the minimum standards so they can enforce their own watering violations.

Ms. Hawk asked what the Board members should do if they do not like the way an ordinance is written and is left for interpretation, and Ms. Kunkle explained the Text Amendment process to the Board.

Conversation among Board Members continued on topics such as signs, skateboard ramps, watering the greens at the local golf courses, and whether or not reclaimed water is exempt from the watering regulations.

There was further discussion between Board Members and clarification by Mr. McDole regarding the types of discussions, such as procedures, the Board Members may have between themselves.

Mr. McDole advised the Board not to discuss any matter that may come before them or a procedure because the procedure could be an issue of discussion that could come before the Board.

Chairperson Slayton asked for a motion to adjourn. Everyone was in agreement and the workshop adjourned at 6:35 p.m.

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
JULY 17TH, 2007
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of July 17th, 2007 was called to order at 4:40 p.m. Answering to roll call:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Maggie Hawk

Jay Crocker (Absent)

Elliott Hoffman

Carol Kerrigan

Tom Wheeler

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole.

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

April 17th, 2007

Maggie Hawk made a motion to approve the minutes as written; seconded by Elliott Hoffman. Motion passed unanimously on roll call vote 6-0.

SWEARING OF CITY STAFF:

Regina Lynne Kunkle, Code Enforcement Supervisor was sworn for testimony.

OLD BUSINESS:

None.

REQUEST FOR LIEN REDUCTION

C2006-0915: Bouchelle 401/403/405 Development, LLC

[Served]

Violation of §802.01 of the Land Development Regulations by permitting or causing to be permitted residentially zoned lots to be used for the storage of building materials and construction equipment without a current building permit in effect located on Bouchelle Island.

January 16th, 2007: The Board entered an Order giving Bouchelle 401 Development, LLC, Bouchelle 403 Development, LLC and 405 Bouchelle Development, LLC until the 20th day of February 2007 to come into compliance or face a fine of \$250.00 per day for each and every day the violation continued. A fine of \$250.00 per day started on the 21st day of February 2007 and totals \$500.00 (2 days).

Patricia Burns was present and sworn for testimony.

Ms. Burns testified that someone at City Hall representing the code enforcement office told her that as long as Bouchelle had submitted an application for a building permit to the building department that the code enforcement board would not fine the property owner.

Ms. Burns further testified that after the Board's hearing and realizing that this information was incorrect, Bouchelle Island was brought into compliance within two (2) days after that Board's hearing

Ms. Kunkle confirmed the compliance time for the Board.

John Shelby moved to reduce the fine of \$500.00 to \$250.00; seconded by Ms. Kerrigan. Motion carried on roll call vote unanimously 6-0.

NEW BUSINESS:

C2007-0397: Marlene Djusic

[Served]

In Compliance

Violation of §26.172. of the City Code of Ordinances by permitting or causing to be permitted the installation of an electrical panel without the required permits located at 2612-A N. Dixie Freeway and 2612-B N. Dixie Freeway.

Permit for 2612-B has been issued, pulled as owner/builder. Owner occupies this unit.

C2007-0463: George E., Karrol M., Bruce F. & Darlene J. Barry [Served]

In Compliance

Violation of §70-38. of the City Code of Ordinances by permitting or causing to be permitted an encroachment (storing construction equipment) upon the City right-of-way located at 803 E. 11th Avenue.

REPEAT BUSINESS:

None

DISCUSSION:

None

ADJOURNMENT:

Mr. Crocker made a motion to adjourn; seconded by Chairperson Slayton. All agreed and the Board adjourned at 5:35 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:

The Administrative Specialist
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2265
Fax: 386.424.2148