

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
JANUARY 16TH, 2007
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of January 16th, 2007 was called to order at 4:33 p.m. Answering to roll call:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Maggie Hawk

Jay Crocker

Elliott Hoffman

Carol Kerrigan

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

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

November 21st, 2006

Jay Crocker made a motion to approve the minutes as written; seconded by Carol Kerrigan. Motion passed 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.

OLD BUSINESS:

C2006-0098: Arthur J. Sullivan, Jr.

[Posted]

Violation of §38-113 of the City Code of Ordinances by permitting or causing to be permitted discarded and abandoned building materials, boat motors, machinery, waste material and trailers upon the subject property located at 306 Winefred Avenue.

Violation of §70-38 of the City Code of Ordinances by permitting or causing to be permitted discarded and abandoned building materials, boat motors, machinery, waste material, trailers, recreational equipment and a vehicle in excess of one (1) ton rated capacity obstructing and encroaching upon a public street located at 306 Winefred Avenue.

Violation of §802.03 D. of the Land Development Regulations by permitting or causing to be permitted a truck in excess of one (1) ton rated capacity to be parked in a residentially zoned district (R2) located at 306 Winefred Avenue.

Violation of §802.04 of the Land Development Regulations by permitting or causing to be permitted the storage of more than two (2) pieces of recreational vehicles upon the subject property located at 306 Winefred Avenue.

March 21, 2006: The Board continued this case until April 18, 2006.

April 18, 2006: The Board found Mr. Sullivan in violation of §38-113 and §70-38 of the City Code of Ordinances. The Board continued the case regarding §802.03 D. of the Land Development Regulations until July 18, 2006. The Board found Mr. Sullivan in compliance with §802.04 of the Land Development Regulations.

July 18, 2006: The Board found Mr. Sullivan in violation of §38-113 and §70-38 of the City Code of Ordinances and §802.03 D. of the Land Development Regulations and gave him until August 15, 2006 to bring the property into compliance or face a fine of \$50.00 per day for each and every day the subject property remains in violation.

August 15, 2006: The Board continued this case to September 19, 2006.

September 19, 2006 The Board continued this case until November 21, 2006. A fine of \$50.00 per day started on the 16th day of August, 2006 and totals \$4,900.00 to date (98 days).

November 21, 2006 **The Board continued this case until January 16th, 2007. A fine of \$50.00 per day started on the 16th day of August 2006 and totals \$7,650.00 to date (153 days).**

Chairperson Slayton stated for the record there was no one present to speak on behalf of this case.

Ms. Kunkle testified that the City was looking into starting this case over and that Ms. Bobelak was submitting pictures taken today for the board's review. Ms. Kunkle further testified that several of the violations that were previously brought into compliance had returned, and that due to Mr. Sullivan's health, there had been no contact from him. Ms. Kunkle further explained that the City would like to bring all of the violations back before the Board as a new case.

Ms. Kunkle testified this is a homestead property and to Staff's knowledge Mr. Sullivan owns no other property that the City could attach a lien, and that case law suggests that homestead properties should not be liened.

Ms. Kerrigan said she wanted to defer to the Assistant City Attorney, Mr. McDole.

Mr. McDole advised the Board there was an appellate case that basically interpreted the homestead law to go beyond an actual foreclosure and prevent a property from being liened. Mr. McDole advised the Board not to place a lien on the homestead property.

Mr. Crocker asked Mr. McDole if there was any remedy.

Mr. McDole stated any other remedy that is provided by Chapter 162.

Ms. Kunkle explained that the City was looking at remedies outside of Chapter 162 and that the Police Department would be place a 10-day notice on the truck. Further, Ms. Kunkle explained that the City was looking at placing "No Parking" signs on the right-of-way since the boat and motor home were located in that area.

Chairperson Slayton asked Staff if a new case was started what would happen with this case and the fine involved.

Mr. McDole explained that the fine was established but unfortunately the legislature and the Florida Constitution does not give this Board any way to enforce it against a homestead property. Mr. McDole further stated other remedies would be to pursue injunctive relief, prosecuting the person criminally in county court, and whatever else is provided the Board. Mr. McDole continued by explaining that he has suggested some new ordinances for the City to use on these types of properties and that they would be recommended to the City Commission. These ordinances would allow the clearing of lots, to prevent front yard parking and the ability to tow vehicles away so the Board does not have to struggle with these homestead cases when there was no compliance. Mr. McDole stated there was no instant remedy for the Board at this time.

Chairperson Slayton asked if a motion should state to reduce the fine to zero.

Ms. Kunkle stated the fine could be reduced per Chapter 162 to zero.

Mr. McDole stated the fine could remain; however, it was the lien that creates the problem.

Ms. Kunkle reminded the Board that a lien had not been filed on this property.

Mr. Crocker asked Staff if this case could be removed from the docket, leave the fine at the amount that had been accrued and close this case until Staff feels it necessary to bring this before the Board.

Mr. McDole responded that it could be done but asked Staff if they felt there would be any hope for resolution.

Ms. Kunkle said this case would remain status quo for a very long time.

Jay Crocker made the motion that the fine of \$7,650.00 be imposed with no further action to be taken by the Board; seconded by Carol Kerrigan. Motion carried unanimously on roll call vote 6-0.

C2006-0139: Ocean Palms Beach Club, Inc.

[Served]

Violation of §303.1 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior of the buildings to deteriorate to such an extent that they are no longer in good repair, no longer structurally sound and sanitary and poses a threat to 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 exterior wood surfaces of the buildings that 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 structures to exist with structural members that 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 structures to exist with foundation walls that 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 structures to exist with exterior walls that 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 structures to exist with roofs that 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 structures to exist with exterior stairs and landing that 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 structures to exist with the interior of the buildings that 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 structures to exist with interior surfaces, including windows and doors, that 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 of all charges and gave them thirty (30) days to secure the buildings and grounds including but not limited to: roofs, decks, windows, fencing and balconies and appear back before the Board August 15, 2006.

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

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

Edward Polomsky and Reed Boardman were sworn for testimony.

Mr. Polomsky, an owner and a board member for Ocean Palms Beach Club, Inc., testified that the President, Jeff Bledsoe; the Treasurer, Deanna Bledsoe and the Vice President, Joe Reed all resigned. Mr. Polomsky further testified that there was an emergency meeting held Saturday to elect an acting president to speak on behalf of Ocean Palms Beach Club for this hearing. Mr. Polomsky explained four board members resigned at the beginning of the year and left the other owners and board members abandoned. Mr. Polomsky explained that he tried to contact Mr. Bledsoe and Mr. Reed since October 2006 to inquire about the status of this case and that he is trying to obtain all the records used for Ocean Palms Beach Club.

Mr. Boardman testified that he is a consultant hired by the board of directors, through Mr. Bledsoe, President and Mr. Reed, Vice President. Mr. Boardman

further explained that he had presented a plan to this Board in August 2006 for the securing and cleaning of the property, alleviating the fencing liability, replenishing the sand, submitting plans for the renovations, as well as an overall plan for the property; and that a contractor was hired to take care of all this. Mr. Boardman further testified that he was unable to move forward with these plans without a representative of the board and he had a non-disclosure agreement with Ocean Palms Beach Club, Inc. and Mr. Bledsoe not to communicate outside of their board.

Mr. Boardman said that he could do nothing contractually without a duly authorized board, and that the board of directors does not want to sell this property and was still trying to find out what the bank account situation was. Mr. Boardman stated until he was legally able to perform these functions the property would remain in the same state as it is currently and become a worse situation legally than the property was today. Mr. Boardman stated he had arranged funding to get the clean up done.

Ms. Kerrigan stated she was supportive the last time this case appeared before the Board but now she was concerned and asked Mr. Boardman when would there be something definitive.

Mr. Boardman stated he was prepared to take this on and move forward regardless of the finances for Ocean Palms Beach Club, Inc. and would secure the building in an orderly fashion within the next couple of weeks (14 days).

Mr. Crocker asked Mr. Boardman what could be completed by February 20th, 2007, which was the next regularly scheduled Code Board Meeting.

Mr. Boardman stated by February 20th, 2007 the building would be secured as if they were to begin a new construction project by: close and seal the soffits, the property cleaned, remove the shrubs, properly fence the property, hire a pest control company to clear the property of vermin, seal all windows and doors securely, removal of decking, removal of rope, and that the mechanical equipment would be disconnected and removed.

Ms. Bobelak submitted pictures of this property to the Board, once confirmed by Mr. Polomsky, that she had taken on the 4th day of January 2007 for their review.

Ms. Kerrigan stated she would like a Building Official from the City's Building Department to be present at the next meeting to get their thoughts regarding this project.

Ms. Kunkle stated on July 18th, 2006 the Board gave Ocean Palms Beach Club, Inc. thirty (30) days to secure the buildings and the grounds including roofs,

decks, windows, fencing and balconies and to appear again before the Board on August 15th, 2006 which had been taken care of at that time. Ms. Kunkle stated there had been no maintenance performed since that time and plans were to be submitted to the Building Department by October 2006.

Mr. Crocker asked if the Board determined if they had come into compliance with regard to the security of the building at the August 15th, 2006 meeting.

Ms. Kunkle testified that they had complied with the Board's Order; however, they did not comply with their own compliance schedule as of October 17th, 2006 by submitting plans to the Building Department. *Ms. Kunkle recommended the Board give Ocean Palms Beach Club, Inc. a certain amount of days to pull a permit to either demolish or rehabilitate the structures or face a fine of \$250.00 per day for each and every day the property remains in violation.*

Mr. Crocker stated that Mr. Boardman testified that this property could be secured by February 20th, 2007 and asked how long it would take for him to obtain approval and permits to begin the rehabilitation of this building.

Mr. Boardman stated that would take longer than February 20th, 2007 but could not provide a firm date until he had an opportunity to reconstitute the board of directors but that he believed plans could be submitted to the City by March 20th, 2007.

Linda Hoffmeister, 2607 Hill Street was sworn for testimony. Ms. Hoffmeister submitted pictures to the Board of the property that she had taken on January 12th, 2007. The pictures were confirmed by Mr. Polomsky and Mr. Boardman. Ms. Hoffmeister stated this building is blighted and the neighbors of Hill Street are frustrated. Ms. Hoffmeister stated the sand that was pumped into that property had caved in.

William Edward Hoffmeister was sworn for testimony. Mr. Hoffmeister stated he believed this Board had been extremely tolerant with Ocean Palms Beach Club, Inc. and what they said could be done in 30 days had not been accomplished in the last two and a half years. Mr. Hoffmeister stated he appreciated what this Board has done and ask that this Board be firm, seek answers and get something done on this project.

Carol Kerrigan made a motion to give the property owners until February 20, 2007 to secure the buildings and grounds including but not limited to roofs, decks, windows, fencing, balconies, soffits and to contract with a professional pest control company to remove and treat any vermin issues, as well as submit a report on their plan of action to either renovate or demolish this structure with representation at the next meeting 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; seconded by Jay Crocker. Motion carried on roll call vote 5-1 with Elliott Hoffman casting the dissenting vote.

C2006-0228: Frances S. Harris, ETAL

[Served]

Violation of §108.1.1 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted unsafe structures to exist that are dangerous to the life, health, property or safety of the public located at 512 Flagler Avenue.

October 17, 2006: The Board found this case in violation and gave Frances S. Harris until January 16, 2007 to bring the property into compliance or face a fine of \$250.00 per day for each and every day the property remains in violation.

Chairperson Slayton stated for the record there was no one present to speak on behalf of this case.

Ms. Bobelak submitted pictures that she took today to the Board for their review. Ms. Bobelak stated the respondent was working toward acquiring a demolition permit and had already obtained a permit to remove the asbestos siding, which had been completed. *Ms. Bobelak recommended continuing this case until March 20, 2007.*

Jay Crocker made a motion to continue this case until March 20, 2007; seconded by Carol Kerrigan. Motion carried unanimously on roll call vote 6-0.

NEW BUSINESS:

C2006-0608: Margaret Thompson

[Served]

Violation of §301.3 on the International Property Maintenance Code, 1998 Edition by 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 located at 353 Palm Street.

Chairperson Slayton stated for the record there was no one present to speak on behalf of this case.

Ms. Bobelak stated Ms. Kunkle had the initial contact with the respondent and the pictures submitted to the Board for their review were taken by Ms. Kunkle this morning. Ms. Bobelak stated the respondent was asking for help from Code

Enforcement to solve this problem by submitting the voluntary paperwork for demolition.

Ms. Kunkle stated the voluntary demolition would take some lengthy probate process.

Carol Kerrigan made a motion to order the City to demolish this property at 353 Palm Street.

Mr. McDole stated there was a procedure in place for declaring buildings to be unsafe and dilapidated and order those structures to be demolished.

Ms. Kunkle stated back in the mid 1990's there was a precedence set by the creation of the demolition program and that the Board gave the owner thirty (30) days to obtain permits to either demolish or rehabilitate the structure and in the event the owner failed to comply then the Board authorized the City to abate the nuisance.

Jay Crocker made a motion to give the respondent thirty (30) days to bring the building into compliance or have a permit to demolish; seconded by John Shelby. Motion carried unanimously on roll call vote 6-0.

C2006-0849: John Nunziata

[Served]

Violation of §74-147 of the City Code of Ordinances by permitting or causing to be permitted conducting an automobile sales business (3 J's Auto Sales) that is not being conducted from one location located at 515 N Dixie Freeway.

Violation of §604.14 G. (1) d. 15. of the Land Development Regulations by permitting or causing to be permitted the use of an off-site directional sign without the required permit located at 515 N Dixie Freeway.

John Nunziata was sworn for testimony. Mr. Nunziata stated he was familiar with the violations he had been charged with and did not agree with the violations.

Ms. Bobelak stated the first violation listed was in compliance; however, the second violation was derived from a sign on the side of a trailer that was still located at the restaurant.

Mr. Nunziata stated he owned Pepino's Restaurant that was located across the street from his car lot (3 J's Auto Sales). Mr. Nunziata stated the trailer that Staff referred to was used for motorcycle sales and was movable and not a permanent sign. Mr. Nunziata stated Staff did not want the trailer located on US1 so he located the trailer on the side of this building. Mr. Nunziata stated his attorney

told him US1 was part of the State and Orange Street belongs to the City. Mr. Nunziata stated he was not doing anything dishonest or wrong because he owned both properties and he did not see a problem.

Ms. Kunkle stated Mr. Nunziata needed a permit for a sign that is off-site directional and signage was based on lineal front footage of his property. Ms. Kunkle stated temporary signs were prohibited in the City and Mr. Nunziata could not obtain a permit for this sign and could not place that sign on either one of the properties named above.

Jay Crocker made a motion to have Mr. Nunziata come into compliance by the February 20, 2007 meeting or face a fine of \$50.00 per day for each and every day the property remains in violation; seconded by John Shelby. Motion carried on roll call vote 5-1 with Elliott Hoffman casting the dissenting vote.

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.

Ms. Kunkle testified that the respondents were storing building materials and construction equipment without a current and valid building permit in effect. Ms. Kunkle submitted pictures that Ms. Bobelak had taken this morning for review by the Board. Ms. Kunkle further testified that there are two remaining two-story buildings to be built, and that she received a telephone call on Friday from a representative from DiMucci stating they intended to obtain the building permits needed this week, but that no application for permits had been submitted at this time.

Nancy Murphy and Sharon Borgerson were sworn for testimony.

Ms. Murphy stated her main concern was after Mr. DiMucci withdrew his plans on 9/11/2006, Mr. DiMucci fenced the area where loose materials, 55 gallon drums, the crane and two additional earth moving machines with flat tires are stored. Ms. Murphy added that the 55 gallon drums were of concern since the residents do not know what was being stored within these drums and they were rusted.

Ms. Borgerson submitted pictures she had taken of the fenced area showing the items stored to Staff and to the Board for review. Ms. Borgerson said the residents would like notification if Mr. DiMucci submitted for another permit.

Ms. Kerrigan asked Staff if the building permit was renewed could anything be done about the inoperable equipment that was stored on the property.

Ms. Kunkle stated Staff would have to research but believed the equipment would have to be moved in order to construct the last two buildings and that if the equipment was not removed Staff would look at other alternatives in order to have the inoperable equipment removed.

Jay Crocker made a motion finding the respondents in violation and gave them until February 20, 2007 to come into compliance or face a fine of \$250.00 per day for each and every day the property remains in violation; seconded by John Shelby. Motion carried unanimously on roll call vote 6-0.

REPEAT BUSINESS:

No repeat business.

DISCUSSION:

None.

ADJOURNMENT:

Jay Crocker made a motion to adjourn; seconded by John Shelby. All agreed and the Board adjourned at 5:53 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:

Inga Fegley
Administrative Specialist II
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2242
Fax: 386.424.2143