

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
FEBRUARY 20TH, 2007
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of February 20th, 2007 was called to order at 4:32 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

January 16th, 2007

Jay Crocker made a motion to approve the minutes as written; seconded by John Shelby. 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:

C2006-0139: 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.

Reed Boardman was sworn for testimony. Mr. Boardman stated he had submitted to Staff an affidavit allowing him to speak on behalf of Ocean Palms Beach Club, Inc. Mr. Boardman stated he felt all the criteria required by the Board had been met with exception to the fence that was scheduled to have repairs completed tomorrow. Mr. Boardman stated he had met with the Building Officials and set up additional meetings in order to move forward with the criteria necessary to approve and permit this project for renovation.

Ms. Bobelak submitted pictures to the Board of the property that were taken by her this morning after Mr. Boardman agreed the pictures were an accurate and current representation of the property. Ms. Bobelak submitted a report by the pest control company regarding this property to the Board for their review.

Ms. Kunkle submitted the original Notice of Violation to the Board for their review. Ms. Kunkle stated this Notice showed specific language as to the condition of the buildings. *Ms. Kunkle stated the City recommended the Board refer this case to the Building Department for enforcement under the Unsafe or Abandoned Structure Ordinance.* The Building Official completes a determination that the structures are unsafe or abandoned and the owners would be given a 45 day period of time to obtain permits or appeal the case to the Building Trades Board. If compliance was not met within that 45 day period of time then the City would take this case before the Building Trades Board for condemnation of the structures.

Mr. Crocker asked Staff if action needed to be taken by this Board to refer the case.

Mr. McDole stated the case could be referred directly from Staff but this Board had jurisdiction over this case now and it would be nice for this Board to conclude its action and then refer the case should that be the desire of the Board. Mr. McDole further stated this Board could still vote to impose a fine which would run simultaneously with any other acts.

Ms. Kerrigan stated she was in favor of referring the case to the Building Department because this Board was not qualified to address all the structural issues that were included in the original Notice of Violation.

Mr. Crocker asked Staff of the items discussed at the last hearing and were required in the Board's Order (with exception of the fence problems) if this case was substantially in compliance.

Ms. Kunkle testified that they are substantially in compliance with the Board's last Order.

Mr. Shelby stated that this Board had an obligation to ensure this property remains secure and was uncertain about relinquishing the authority to fine the property.

Mr. Crocker stated he would be inclined to enter a motion that Ocean Palms Beach Club, Inc. had substantially complied with the January, 2007 Order; therefore, the \$250.00 fine would not begin. This Board would take no further action at this time and continue the case to allow Staff to go before the Building Trades Board but that would leave this case just laying out there. This Board would not divest themselves of jurisdiction and would leave it to Staff's discretion as to if and when this case would be back before this Board.

Ms. Kerrigan stated she would like to hear from Rick McFadden, Chief Building Official regarding the safety of this structure.

Richard McFadden was sworn for testimony.

Ms. Kerrigan asked Mr. McFadden for his opinion from what he had seen of the structure and if the structure was in imminent danger of collapse.

Mr. McFadden stated this structure was not in imminent danger of collapse; however, this structure was an extreme eyesore with some unsafe features. Mr. McFadden stated all the stairs had been removed leaving the upstairs balconies with no access; the roof for the most part was dried in; the majority of the water damage, mold and mildew had come from windows being blown in and doors being blown open. Mr. McFadden further stated he had not been in the building since the hurricanes of 2004 but had walked the entire site today and that the buildings had been secured.

Ms. Kerrigan said her concern was imposing a fine immediately might hinder their financial situation and those funds would be needed to renovate these buildings. The other side was the Building Trades Board was comprised of individuals from the Building Trades making them more knowledgeable regarding these violations and the feasibility of restoration of this building and ensuring the restoration progresses as it should.

Ms. Kunkle stated Staff agreed.

Jay Crocker moved to find the conditions that the Board ordered in January 2007 had been brought into substantial compliance such that the \$250.00 per day fine would not be imposed; seconded by John Shelby. Motion passed unanimously on roll call vote 6-0.

Susan Latshaw was sworn for testimony. Ms. Latshaw provided testimony regarding how the neighbors had been affected.

Tonya Gerhart was sworn for testimony. Ms. Gerhart also provided testimony regarding how the neighbors had been affected.

C2006-0511: Anthony G. Decamillas

[Served]

Violation of §301.3 of 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 402 Flagler Avenue.

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

Ms. Bobelak testified she was contacted by Mr. DeCamillas today, who had submitted a site plan for this property to the Building Department for review. *Ms. Bobelak recommended the Board continue this case until May 15, 2007 which would allow Mr. DeCamillas time to go through site plan review and the permitting process with the City.* Ms. Bobelak stated the walk had been repaired and the lot had been cleaned.

Maggie Hawk made a motion to continue this case until May 15th, 2007; seconded by Carol Kerrigan. Motion passed unanimously on roll call vote 6-0.

C2006-0515: Albert I. Bauer, ETAL

[Served]

Violation of §301.3 of 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 214 Flagler Avenue.

Bert Irwin Bauer was sworn for testimony. Mr. Bauer stated he had testified at the last hearing that the building would be demolished after the first of the year if the property had not been sold. Mr. Bauer stated the permit application had been submitted to the City and Weaver Construction would be performing the demolition within the next three weeks.

Ms. Bobelak submitted pictures to the Board for their review once Mr. Bauer confirmed the pictures were current. Ms. Bobelak stated the demolition of this property had been approved by the City Commission and sees no delay of obtaining a demolition permit. *Ms. Bobelak recommended continuing this case until the meeting on March 20, 2007.*

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

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 that there was no one present to speak on behalf of this case.

Ms. Kunkle stated Ms. Thompson had failed to comply with the Board's order and recommended referring this case to the Building Trades Board for condemnation proceedings, since the owner is deceased and there was no one to sign for the voluntary demolition program.

Carol Kerrigan made a motion to refer this matter to the Building Trades Board; seconded by John Shelby. Motion passed 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. **[Withdrawn 01/16/2007]**

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.

Jay Crocker made a motion to find this case in compliance; seconded by Carol Kerrigan. Motion passed unanimously on roll call vote 6-0.

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.

Patricia Burns was sworn for testimony. Ms. Burns testified she was a representative of the DiMucci Corporation and they had applied for a building permit. Ms. Burns further testified that the final drawings should be completed with the update of City Codes submitted back to the City in approximately one week.

Ms. Kunkle stated an application for the garage permits had been submitted to the Building Department; however, a permit was not in hand as of today. Ms. Kunkle stated this case was still in violation.

Ms. Kerrigan stated the fine should be imposed since the case was not in compliance.

Mr. Crocker stated there was no action required by the Board in order to allow the fine to accrue.

Ms. Kunkle stated the Board needed to find this case in non-compliance.

Sharon Borgerson and Bonnie Cass were sworn for testimony. Ms. Borgerson and Ms. Cass both testified as to how the neighbors had been affected.

NEW BUSINESS:

C2006-0577: Richard S. Capolupo

[Served]

Violation of §304.00 I. of the Land Development Regulations by permitting or causing to be permitted a building to be occupied without completing the improvements as approved on the site plan and obtaining a certificate of occupancy for 521 Flagler Avenue.

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

Ms. Bobelak submitted pictures to the Board for their review that she had taken today. Ms. Bobelak testified that she had not met with Mr. Capolupo but had several meetings with the tenant. Ms. Bobelak stated the building did not have exterior stucco that was a requirement of the approved site plan and that the addition is being occupied without a certificate of occupancy. *Ms. Bobelak*

recommended giving the property owner a certain amount of days to bring the property into compliance for face a fine.

Carol Kerrigan made a motion to find this property in violation and gave Mr. Capolupo until March 19th, 2007 to bring this property into compliance or face a fine of \$250.00 per day for each and every day the property remained in violation; seconded by John Shelby. Motion passed unanimously on roll call vote 6-0.

C2007-0074: Michael Scott Wood

[Certified Mail sent 2/8/07]

Violation of §38-113. (a) of the City Code of Ordinances by permitting or causing to be permitted discarded and abandoned waste material upon the subject property located at 2506 Hill Street.

Ms. Kunkle testified that the Board does not have jurisdiction because verification that the owner received notice had not been obtained.

REPEAT BUSINESS:

No repeat business.

DISCUSSION:

Mr. Crocker asked Staff if they brought properties to the Building Trades Board directly instead of bringing that case to this Board.

Ms. Kunkle stated this was a new process for Staff.

Ms. Kerrigan stated the County began with the Code Enforcement Board and if there was no resolution then the case would be brought to the Building Trades Board.

Mr. Crocker stated this Board could do all within their power and at the same time bring the cases before to the Building Trades Board.

ADJOURNMENT:

Jay Crocker made a motion to adjourn; seconded by John Shelby. All agreed and the Board adjourned at 5:41 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