

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
AUGUST 21ST, 2007
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of August 21st, 2007 was called to order at 4:30 p.m. Answering to roll call:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Jay Crocker

Elliott Hoffman

Carol Kerrigan

Tom Wheeler

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, and Administrative Specialists Tammy Dickerson and Claudia Soulie. Board Member Maggie Hawk arrived at 4:35 p.m.

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

Workshop held on May 30th, 2007

Carol Kerrigan made a motion to continue the minutes until September's meeting, seconded by John Shelby. Motion passed on roll call vote 6-1.

Hearing held on July 17th, 2007

John Shelby made a motion to approve the minutes, seconded by Carol Kerrigan. Jay Crocker asked for a correction of the adjournment. Motion passed on roll call vote 6-1.

SWEARING OF CITY STAFF:

Regina Lynne Kunkle, Code Enforcement Supervisor, Barbara Jo Bobelak, Code Enforcement Officer, Marissa Moore, Planner and Richard McFadden, Chief Building Official, were sworn for testimony.

OLD BUSINESS:

None.

NEW BUSINESS:

C2007-0147: Burke Breneman

Violation of §74-146 of the City Code of Ordinances by permitting or causing to be permitted a business operation (Rider1) without paying the occupational license tax located at 560 Wayne Avenue.

Case cannot be heard, due to lack of jurisdiction, since the certified mail was not accepted.

C2007-0265: James Danielewski

Violation of §38-111 of the City Code Ordinances by permitting or causing to be permitted weeds and undergrowth upon the subject property located at 823 9th Avenue.

Violation of §802-01 of the Land Development Regulations by permitting or causing to be permitted the storage of building materials upon the subject property without a current building permit located at 823 9th Avenue.

Case is in compliance [8.15.07].

C2007-0396: Joey A. Price

No respondent present. Moved to next case. Case was addressed at end of meeting, see page 12.

C2007-0574: TT of NSB, Inc.

Violation of §604.14 B of the Land Development Regulations by permitting or causing to be tree removal (cedar) without the required permit located at 1300 N. Dixie Freeway.

Present to speak on behalf of this case were Attorney Brett Hartley and Mr. Jack Holcomb, owner. Mr. Hartley stated that Mr. Holcomb did not agree with the violation.

Lynne Kunkle recounted the timeline of events leading to this case. Crown Tree Service requested a tree inspection for removal of said cedar tree on April 24, 2007. Tim Murphy inspected the tree, and denied the removal of cedar tree. Copy of aerial picture from Property Appraiser website was admitted into evidence, which showed the canopy of the tree prior to it being cut. Two (2) photographs, sent to Ms. Kunkle's office anonymously, showing a tree removal service trimming branches, etc in preparation of removing the tree were also admitted.

Ms. Hawk asked Ms. Kunkle the reason(s) that Tim Murphy gave for denying the permit? Ms. Kunkle was not sure; she believes that this tree was part of the original siteplan and as such may not be removed. That would be normal policy.

Mr. Crocker asked for a process or procedure by which one can appeal a denial of a tree permit? Who does one have to go through? Ms. Kunkle did not believe there is an appeal process and turned to City Attorney McDole for verification. Mr. McDole stated that any LDR Interpretation appeal can proceed through the Planning Director and then up to the City Manager. Ms. Kunkle interjected that the Commission had the final say.

After the board members reviewed the pictures admitted into evidence, Mr. Crocker asked Mr. Hartley, that since he (Mr. Hartley) had no objections to the pictures, did he (Mr. Hartley) stipulate that this tree did exist on this property until fairly recently? Mr. Hartley concurred and stated that the real dispute is not that this tree had been removed, but the factual circumstances and the why that lead to the tree removal. His client, Mr. Holcomb, is a car dealer and relied on the representations of this professional contractor, M&E Construction, that the right permits and paperwork had been done.

Mr. McDole asked the question if a violation notice had been made part of the record and marked. Lynne said this was a new procedure. Lynne asked if she should submit the notice for the Board's review or just give it to the clerk. It was suggested to offer it to see if there were any objections to it. Mr. Slayton stated that the Board had no objections to the entry of the notice, in fact, they had no objections to any evidence that had been presented in this case.

Mr. Hartley continued to say that Mr. Jack Holcomb, the GM of GTE, dba NSB Chrysler, Jeep, Dodge, contracted with a local builder, Marvin Engle, owner and operator of M&E Construction, PO Box 888 NSB to add an addition to the existing service department. Mr. Engle indicated that it would be much easier for the concrete trucks to make access for pouring the slab if the tree was removed. Mr. Holcomb told Mr. Engle "Do whatever you have to do; just do it" thereby making an assumption that Mr. Engle, as a licensed and certified contractor in the City, and having an understanding of what the rules and regulations are, would comply

with these rules. Mr. Engle did comply up to the point where he retained a licensed tree service (Crown Tree Service). This tree service applied for the necessary permit, which was denied. Mr. Holcomb was never informed that the permit had been denied and no other permit was issued. Mr. Holcomb, once again assuming that a certified contractor complied with City rules, paid Mr. Engle \$2000 and some change to have the tree removed. It was not until this issue came up that he found out that he had been lied to, City staff had been misrepresented too, regarding status of the removal of the tree. Mr. Holcomb has tried to come back into compliance by doing some additional plantings but is running into some soil problems in that area. At this point, Mr. Hartley would like to say to the Board that Mr. Holcomb and TT of NSB, Inc. are not in willful violation nor did they intend to bring upon the results that happened. They would like to work with the Board to satisfy any requirements there are, trying to avoid any financial hardship or punishment for the dealership. Mr. Hartley believes that Mr. Engle was fined by the Building Department for his participation in this. Mr. Hartley made Mr. Holcomb "available" for questions and to explain in more detail the relationship between he and Mr. Engle.

Mr. Crocker, addressing Mr. Hartley, understood his contention and agreed that the violation was probably not a non-willful or intentional violation, but questioned if this was significant for the Board's purposes, legally?

Mr. Hartley stated that this was mitigation. He felt that there had to be a way to work this out and that the dealership would not be unnecessarily punished. The remedy was seven (7) trees of 2 ½ inches in diameter and 6 inches from the base at a 9' tree height. There were some limitations as to what can be placed in this small of an area. Mr. Hartley hoped that there was some other way to craft a remedy that may be more satisfactory and Mr. Holcomb suggested that maybe, in lieu replacing the seven (7) trees, he could make some kind of a donation on behalf of the dealership to some tree fund, or benefit some other part of the City that was more used.

Mr. Wheeler asked the question what size the tree was that had been removed. The landscaper for the dealership, Justin Glatt, was sworn in to answer this question. Barbara, Lynne and he had not come to an exact figure. Lynne stated that she measured an area where the tree had been, and came up with a figure of 36" to 42" at best with no tree being in place. Ms. Kerrigan asked if this measure represents the diameter or the circumference? Lynne answered that this figure reflected the diameter.

Ms. Kerrigan continued that some of them felt very strongly about the trees in the City, especially when they were protected and historic. The problem that Ms. Kerrigan had with this, was that the trees get in the way of things, and clearly this one was in the way of something that the dealership wanted to do. Mr. Holcomb interjected that the plans for the expansion of his service drive and new parking lot had been drawn up for six (6) months prior and nowhere on these plans, which he can present, did it reflect that this tree had to be removed. Mr. Holcomb

continued that the tree may have been an inconvenience for his contractor, but he (Mr. Holcomb) had no intentions of removing it.

Mr. Kerrigan read from the inspection report from Crown Tree Service, that stated “the tree by service area had to come out so that they can pave for moving of cars”. Mr. Holcomb said he had no idea that this had even been submitted. Ms. Kerrigan responded that he, Mr. Holcomb, was the property owner and as such ultimately responsible and she agreed that he should make a contribution, but more in the line of a fine. Ms. Kerrigan continued that there was a criteria in place for irreparable and irreversible damage. A tree that goes down like that and will not come back in her or her children’s lifetime constituted, in her opinion, an irreparable and irreversible damage, and the fine for that can be \$5,000. Mr. Holcomb re-iterated that he did not know that a tree removal permit had been requested, neither did he sign anything nor have a contract with his contractor. Mr. Holcomb continued to say that the contractor, M&E Construction, went to the City to apply for permits not on Mr. Holcomb’s behalf, since at this time Mr. Engle was not contracted by the dealership. The contractor contacted Crown on his own, since the tree was in the way of his trucks. Mr. Holcomb asked who would go and request a tree permit two (2) months earlier, then go take the tree down and assume that no one is going to see it. Ms. Kerrigan interjected that she can’t imagine who and asked if the tree was removed in the middle of the night? Mr. Holcomb answered it was done on a weekend. Mr. Holcomb felt that the contractor misrepresented this to City from the beginning. Mr. Holcomb’s bill, which he wants to admit into evidence, is not to a tree service, but to M&E construction. Mr. Holcomb restated his lack of knowledge, he said he was not there when the tree was removed. If the Board wants to levy a punishment, shouldn’t there be some proof of intent on his part. Ms. Kerrigan interjected that the Board does not have to determine intent, they have to determine that there was a violation on his property and this violation was a tree removal. Ms. Kerrigan felt that Mr. Holcomb’s issue was with the “dude that did it”. Mr. Holcomb agreed with Ms. Kerrigan’s feelings, but objected that the Board was going to fine him up to \$5,000 in a matter that, he felt, he was not given a chance to make a decision, since the contractor did this without his knowledge, but yet he was being held accountable for the result. Ms. Kerrigan interjected that this was just one number and she didn’t know if that was going to happen.

Mr. Slayton asked Mr. Holcomb if he was not aware that the tree removal permit had been denied? Mr. Holcomb answered that he had no idea and the only way he found out was through the gentleman from Crown Tree Service who was buying a car from the dealership. Mr. Holcomb was livid about this whole situation, since no one was able to produce any kind of paperwork with his signature on it, authorizing the removal of the tree. After that, Mr. Holcomb called the gentleman from Crown, who told him that M&E Construction contacted him to remove this tree. Crown Tree Service went to City Hall to request a permit, which was denied, Crown paid the \$90 permit fee and returned the denied permit to the contractor. Mr. Holcomb continued that Justin, the landscaper, went down to the City to get a copy of the denied permit. Mr. Holcomb said that he had no knowledge that any

of this had been done. Mr. Holcomb went to question the contractor, who denied it. Mr. Holcomb felt that he took all the actions he could take, but he did not willfully allow this tree to be removed, since he didn't gain anything by having this tree removed.

Mr. Wheeler re-stated the fact that as the property owner, Mr. Holcomb is ultimately responsible, regardless if he told someone to do it or not. Mr. Wheeler continued to say that there are conflicting testimonies between Mr. Holcomb and Mr. Hartley in regards to the tree removal being part of the original plan. Mr. Hartley asked to clarify the issue from a timeline standpoint. Mr. Hartley continued to say that there was no conflict in that regard, but that maybe he was not clear enough: Some information was not available from the onset, but became available only after Mr. Holcomb did his research to find out what the truth was in this situation. Only then did Mr. Engle tell Mr. Holcomb that it was just more convenient for him (Mr. Engle) to get the concrete trucks in there if the tree was not there, instead of having them drive over the other part of the driveway and potentially crack it.

Mr. Holcomb said if he did something wrong, if he said to cut the tree down, ok, fine him and let's move on, but he didn't do it. And for him to be fined up to \$5,000 and the contractor, who he hired and thought he could trust, since he is licensed in the City, only gets a consequence of \$250, where was the protection for the landowner.

Mr. Shelby asked Mr. Holcomb if he lived in New Smyrna and if he was aware of the New Smyrna tree ordinance, which has been in the Newspaper for the last three (3) years. Mr. Holcomb replied yes to living in NSB and that he knew about the tree ordinance, and the trees that he had removed three (3) years ago where removed properly with a valid permit. It always went back to the fact that he, Mr. Holcomb, was not aware of what the contractor was doing until the tree had been removed.

Mr. Hartley continued that he understood that this was only mitigation, but felt that there were big numbers being thrown around, because it was NSB Chrysler, Jeep, Dodge and he didn't think that this was entirely fair. He felt it was better to make some kind of a donation to an organization...

Mr. Crocker asked if Mr. Engle was a licensed contractor in the City of New Smyrna Beach. Ms. Kunkle directed this question to Mr. McFadden, who affirmed that he is a licensed contractor. Mr. Crocker continued that it was mentioned that Mr. Engle was fined \$250 and he would like to know how this came about and who levied this fine. Mr. McFadden replied that he did not know, but he did know that Mr. Engle had been replaced on that permit application by another CBC (Certified Building Contractor). Mr. Crocker continued to ask if there could have been a complaint made and a case brought against M&E Construction before this Board? Ms. Kunkle replied that they had no proof that Marvin Engle did it. She continued that Mr. Engle came to City Hall and spoke with Ms. Bobelak. He

decided to take it upon himself to say that he removed the tree. Ms. Kunkle stated that this was not Marvin Engle in these pictures (first mentioned in the 2nd paragraph), he did not remove the tree. He may have contracted with someone.

Mr. Hartley provided the Board with a copy of an invoice from M&E Construction, paid by TT of NSB, for services of removal of tree. Per Mr. Hartley, Mr. Engle had the audacity, without Mr. Holcomb's knowledge, to go to the dealership, walk into the Finance Department and present the invoice for payment. A check was cut on July, 23, 07. The invoice was clear proof that Mr. Engle knew and got paid for this service, and in fact Mr. Holcomb found out later from Crown Tree Service, that Crown would have only charged \$300 and some change to remove the tree and Mr. Engle marked it up to \$2,070. Not only did Mr. Engle unlawfully remove the tree, he over-billed for it as well.

Mr. Crocker mentioned that he was sympathetic to TT of NSB's plight, however, he believed that somebody needed to be fined for cutting this tree down and unless something was done against M&E Construction, he felt that the Board only had one recourse and that was to go against TT of NSB. He suggested furthermore that M&E may have to answer more for this violation of ordinance as a recourse for TT of NSB, if the City for some reason can't or doesn't bring M&E before this Board. Mr. Hartley interjected that M&E may very well have to answer more for this violation of ordinance in a different court, however, he was not asking the Board to get involved in that argument between M&E and Mr. Holcomb and TT of NSB. He asked to just take the facts of this case in the mitigation. Mr. Holcomb and Mr. Engle are far from done doing business in dealing with this situation.

Mr. Crocker asked Ms. Kunkle if this was the first time she had ever heard of Builders being submitted. Ms. Kunkle affirmed that. Mr. Crocker wanted to know if Ms. Kunkle, had she known that before, felt as if a case might have been brought against M&E as the respondent. Ms. Kunkle answered with a firm no. Ms. Kunkle continued that Crown refused to remove this tree, since he knew better and was under the jurisdiction of this Board. She wanted the people who actually removed this tree. Mr. Hartley said the M&E billed for the removal of the tree. Ms. Kunkle stated that they just contracted with someone to remove the tree and they are whom she wants. However, nobody was willing to "give them up" and give her a name. Mr. Crocker wanted to know if Ms. Kunkle agreed that legally a case could have been brought against M&E before this Board? Ms. Kunkle stated probably, but it was not her preference. Mr. Crocker continued to ask if she agreed that just as TT had an incentive to assist the City in prosecuting M&E before the Board, M&E might very well have some incentive to prosecute the actual "evil doers" here. Ms. Kunkle responded that Mr. Hartley had stated that he was not asking the City or the Board to get into that "dog fight" between the two of them and Ms. Kunkle preferred to stay out of it.

Mr. Crocker was of the opinion that TT of NSB might end up being fined for this tree removal when they were not at fault. Ms. Kunkle re-iterated that they are the

property owners and responsible. Mr. Crocker was interested in finding some way to get the people that are more responsible, more culpable, this would be more just in his eyes. Mr. Hartley said that Justin, the landscaper for TT of NSB, would like to look at the photographs of the people removing the tree to see if he might be able to identify the company. Ms. Kunkle had no objections.

Mr. Hoffman mentioned that he had been involved in commercial building, and he expected a firm the size of TT of NSB to have an attorney to write up a contract for a project involving this kind of money. Mr. Holcomb agreed with that but he did not quite understand the question. Mr. Hoffman continued that the buck stops with the owner. He recounted past experiences, where his attorney gave him a full sheet of contractors working on his projects that were or were not in compliance before the work was started, and he, Mr. Hoffman had stopped many jobs because of improper paperwork, knowing that he would be ultimately liable. Mr. Holcomb retorted that he did a million dollar plus project in the past with no trouble, and he also reviewed the paperwork and asked questions if he felt necessary. On the current project, he went by the paperwork that he had. He questioned the fact that, in this case, M&E Construction, who he had not hired at this time, was able to go to the City and request permits to work on his property. Mr. Holcomb insisted that, had he known about the intent of the tree removal, he would have stopped it, he did not need the tree to be taken out.

Mr. Hoffman asked Mr. Holcomb if he had copies of these contractors and the permits to go along with them. Mr. Hartley took the floor by saying that there had not been any checks cut, these were just bid proposals on cost. Mr. Hoffman was surprised by the fact that the man would remove a tree without having anyone there to pay for it. Mr. Hartley responded that Mr. Engle was making the assumption that the project was his. There was a bid proposal given and it was accepted, but this was not a binding contract for services to be rendered, but a binding agreement to the dollar amounts.

Ms. Kerrigan felt that the conversation was going off track. The issue was that a tree had been removed and that the Board can't sort out all these different relationships that caused things to happen. The Board always held the property owner responsible for violation on the property and now the Board was being asked to depart from that and she was opposed to that.

Ms. Hawk addressed Mr. Hartley about a comment made by him when he first got up to speak, that his client told the contractor "Do what you have to do". Mr. Hartley wasn't sure about the context in which he made this statement, but said it may have been a blanket statement from a permitting standpoint, to the materials that had to be acquired to getting the project started. Ms. Hawk felt that the contractor took this statement to mean that he had the authorization from TT of NSB to take whatever action he had to. Mr. Hartley commented that this would be a good argument in a case where Mr. Holcomb was acting as a general contractor, directing sub-contractors to do whatever they needed to do. In this case however, Mr. Holcomb relied on Mr. Engle's expertise to get this project

done in the event that they got into a relationship where there was money exchanged. Mr. Hartley stated again that this was just mitigation, this was about making the Board understand that Mr. Holcomb agreed that this was a terrible chain of events leading to the removal of the tree.

Ms. Hawk felt that this may have been a terrible misunderstanding but ultimately the homeowner was to be held responsible. Mr. Holcomb stated that there was no misunderstanding, since there was never any communication between him and Mr. Engle. So he disagrees with this part. And the Board was right, he owns the property and he conceded to the Board to do whatever they see was fit. He can't do anymore.

Mr. Wheeler agreed, after hearing the whole thing, that it was not Mr. Holcomb's fault, but ultimately it was his property and his responsibility. Mr. Wheeler felt that the tree removal company needed to be fined as well as M&E Construction.

Ms. Kunkle asked that the Board took into consideration the testimony that they heard and levy a fine for irreparable and irreversible violation. She also asked to bear in mind that, in the motion, there needed to be a notation that TT of NSB needed to comply with the tree replacement section of the Land Development Regulations (LDR).

Mr. Wheeler felt that something needed to be done. Money didn't do it in this case, replacement of trees did. The City was missing a 36 – 39" tree right on US 1. Having trees replaced would be a more satisfactory substitution for what was lost.

Ms. Kunkle stated that TT of NSB was subject to both, a fine of up to \$5,000 and the requirement to replace the tree in accordance with the replacement section of the LDR.

Mr. Wheeler felt that the LDR was inadequate and needed to be revised to be more aggressive. This case was just like one from two (2) months ago, where the replacement was 1/10th of what had been removed.

Mr. Slayton asked if anybody had a motion. Mr. Crocker made the motion that he would like to separate the penalty from the adjudication part of it. He moved to find TT of NSB in violation of City ordinance, as was alleged, and asked the Board to determine whether or not there was a violation. Seconded by John Shelby and the motion carried on roll call vote unanimously 7- 0.

Mr. Crocker said that he was sympathetic to Mr. Holcomb's plight, but also to the trees as well. He asked if there was something that could be resolved by agreeing, that if they didn't take action today and didn't go forward with the fine, they could put this off to next month? Mr. Crocker suggested an agreed upon fine or donation to a tree fund in lieu of a fine. Mr. McDole interjected that the requirements are set forth in the LDR, and it stated, "shall", it was not by

agreement, TT of NSB had to follow the replacement specifications in the LDR. The fine and the tree replacement are two separate things. Mr. Hartley suggested the TT of NSB might go above and beyond what the LDR mandates, in exchange of a lesser fine. Mr. McDole answered this would be up to the Board to consider in mitigation.

Mr. Slayton asked Mr. Hartley if he has had any discussions with Mr. Kunkle and Ms. Bobelak about a fine, etc. Mr. Hartley answered that he had made some phone calls but not had a chance to connect.

Mr. Holcomb interjected that he will do whatever it takes to make the City happy.

Mr. Wheeler brought up a “tree case” that the Board had before them a few months ago, where they postponed the fine until the next meeting and the case came into compliance, before a fine could be levied. So, he felt that if the Board did not act on a fine today, the same scenario could happen again. Mr. Crocker said that the Board had already determined that TT of NSB was in violation, the Board can levy a fine today or continue it until next month, the Board calls “the shoots”. Ms. Kunkle stated that there was no reason, why this fine can’t be levied at this meeting. The Board needed to follow the 162, which gave three (3) criteria for fining. Mr. McDole elaborated on Ms. Kunkle’s comments: 1. Gravity of the violation, 2. any action taken by the violator to correct the violation and 3. previous violations committed by the violator. Mr. Crocker stated that the Board can take all these things into consideration, but the Board did not have to fine him now. Ms. Kunkle wanted to ask the other Board members their opinion in that regard. Ms. Kerrigan, Mr. Slayton, Mr. Shelby, Ms. Hawk, Mr. Hoffman and Mr. Wheeler all wanted to levy the fine today. Ms. Kerrigan made the motion for a one time fine of \$5,000 for irreparable, irreversible damages; John Shelby seconded this motion. The motion passed on roll call vote 5-2.

Mr. Hartley asked the Board if the mitigation material that they presented meant nothing. Mr. Crocker mentioned that it was not enough to sway the Board.

Mr. Hartley found it highly offensive that the fine was maxed out, given all the facts supplied. Mr. Crocker found it unfortunate that the fine was levied against TT of NSB, but maybe there was some recourse that the fine can be recouped through a legal process against those that were more culpable, but a really nice tree was killed and somebody had to be held responsible. Mr. Hartley asked how many other \$5,000 fines had been assessed in the past. Ms. Kunkle answered that this was irrelevant. Ms. Kunkle offered to make a public hearing request to research this information. Mr. Wheeler stated that he resents the suggestion that the Board levied this fine based on Mr. Holcomb’s finances. The fine was set based on the severity of the case, regardless of the financial situation of the offender.

After a bit more of discussion in this matter, Mr. Slayton asked for the next case to be called.

REPEAT BUSINESS:

C2007-0573: TT of NSB, Inc.

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.

Ms. Kunkle specified that this was the case that had been before the Board last year, the final Board order finding compliance was issued August 15th, 2006. This was the fourth set of replacement trees that had been planted for the removal of pine trees. The City had allowed them (TT of NSB) to replace the replacement oak trees for the fifth time, only this time they used Crepe Myrtles. These trees have been planted and they are in compliance. She wanted to bring to the Board's attention that this was a repeat offense and that TT of NSB had been found in violation in the previous case and that they were subject to a repeat offense fine for approximately forty-eight (48) days that they were in violation.

Mr. Wheeler asked Ms. Kunkle if there was an irrigation system in operation, which Ms. Kunkle affirmed. Mr. Crocker asked if the irrigation system was ok the whole time, Ms. Kunkle answered no, but it was working now and they did a great job. Mr. Slayton asked for more info in regards to the 48-day comment. Ms. Kunkel reiterated that this were the days from the time the violation was found again, a notice of violation was sent out up, until the time of inspection when the property was found in compliance. Mr. Slayton wanted to know if TT of NSB was in contact with code enforcement pretty quickly after receiving the notice. Ms. Bobelak answered yes. Mr. Crocker's inclination in that matter was, to find TT of NSB in violation, however, not to levy a fine but to assess the cost to City staff for the investigation of this violation. Were there any such records? Ms. Kunkle answered no; she could put it on the agenda and bring it back for next meeting. There was some discussion among the Board members as to what trees appeared to be hard to grow in that area of the dealership and which ones grew easily. Jason gave some insight as to the soil content, and their new irrigation system.

Mr. Crocker asked TT of NSB if they agreed that they were in violation. They concurred. Mr. Crocker moved to refine the violation and set the fine at \$100.00. Mr. Wheeler seconded this motion. The motion passed on roll call vote 6-1.

NEW BUSINESS CONTINUED:

C2007-0396: Joey A. Price

Violation of §108.1.1 of the International Property Maintenance Code, 1998 Edition, by permitting or causing to be permitted a structure to exist that has not been maintained in good repair, is no longer structurally sound and sanitary and poses a threat to the public health, safety and welfare located at 605 Downing Street.

Ms. Kunkle commenced that Mr. Price had been in touch with her, they were trying to rehab the house. Mr. McFadden and Ms. Kunkle had condemned the house. Ms. Kunkle submitted photos into evidence, that were taken June 5th, 07 and August 21st, 07. She suggested to find them in violation but to postpone the case until October 16, 2007 to give the owner time to submit all the plans and bring the property into compliance. It was asked if the property posed a safety concern, Mr. McFadden answered that he would not go into the house, he felt that it was very unstable and not habitable. Mr. Slayton asked Mr. McFadden if he had talked with Tom Williams. Mr. McFadden declined, but Ms. Kunkle had spoken with him and she said that Mr. Williams had some plans in his office and he was getting ready to review them. He will make recommendations on contractors for the homeowners.

Mr. Crocker wanted to know if there was a way to a) find a violation and b) require them to come to the October meeting with some sort of plan for coming into compliance. Ms. Kunkle answered that the City had the power of subpoena. Mr. McDole read from the 162.08 Powers of the Code Enforcement Board,. to issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Carol Kerrigan made the motion to find them in non-compliance and to impose the fine at the October 16th, meeting. The objective was for them to do something in the interim. Jay Crocker seconded the motion. The motion passed on roll call vote 7-0.

DISCUSSION:

Ms. Kunkle addressed the Board again about the minutes of the 5/30/07 Workshop minutes. She asked the Board to review them to see if anything needed to be added or changed.

ADJOURNMENT:

Mr. Wheeler made a motion to adjourn; 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:

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