

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

The Hearing of October 16th, 2007 was called to order at 4:35 p.m. Answering to roll call:

Michael E. Slayton, Chairperson

John Shelby, Vice Chairperson

Maggie Hawk

Jay Crocker

Elliott Hoffman

Carol Kerrigan

Thomas Wheeler (Absent)

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Building Official Rick McFadden and Administrative Specialist Claudia Soulie.

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.

Chairperson Michael Slayton stated that David Dempsey called to inform him that he was working with Chase's Restaurant to rectify a violation.

APPROVAL OF MINUTES

Hearing held on September 18, 2007

John Shelby made a motion to accept the Minutes of the September 18, 2007 hearing; seconded by Mr. Hoffman. Motion carried on roll call vote 4-2. Ms. Kerrigan and Ms. Hawk abstained.

<u>C2007-0626:</u>	Cham Bezwiechin	828 S. Duss Street	[POSTED]
<u>C2007-0627:</u>	Cham Bezwiechin	830 S. Duss Street	[POSTED]
<u>C2007-0638:</u>	Cham Bezwiechin	820 S. Duss Street	[POSTED]

Permitting or causing to be permitted weeds and undergrowth upon the subject properties in violation of §38-111. of the City Code of Ordinances.

At the hearing on the 18th day of September 2007, the Board found each property in violation and gave the owner ten (10) days to bring each property into compliance or face of fine of \$25.00 per property per day for each day the properties remain in non-compliance. Cham Bezwiechin failed to comply with each of the Board's Orders and the fines started on the 29th day of September 2007.

Fine Totals:

828 S. Duss Street – Four hundred fifty dollars (\$450.00) for a total of 18 days.
 830 S. Duss Street – Four hundred fifty dollars (\$450.00) for a total of 18 days.
 820 S. Duss Street – Four hundred fifty dollars (\$450.00) for a total of 18 days.

Chairperson Slayton noted for the record that no one was present to represent this case.

Ms. Bobelak informed the Board that the Board orders were sent via certified mail and the properties were posted on September 25th, 2007. The certified mail was returned unclaimed.

Ms. Bobelak had pictures showing that the properties were still in the same condition.

Mr. Crocker made the suggestion to permit the City to abate the nuisance.

Ms. Kunkle asked the Board to authorize the City attorney to record a lien for each of the three (3) properties. Ms. Bobelak reminded the Board that there were fines running on each of the properties.

Mr. McDole asked staff if these properties went into foreclosure. Ms. Bobelak testified that one (1) of them was about to be foreclosed and the rest had just been filed. Mr. McDole felt that this was the reason why there has been no communication with the City and no maintenance on the properties. He said that he assumed that once the Bank got the order of foreclosure, they would either sell or maintain the properties.

Mr. Crocker inquired if recording liens on the properties could get the City any money. Mr. McDole said it was possible, depending on the surplus from the foreclosure sale. Mr. Crocker asked if the Board recording liens on these properties could complicate the sale. Mr. McDole said it wouldn't have any priority over the mortgages, however the Board could always reduce or eliminate the liens.

Mr. Crocker remembered a case a few years back where the Board had to meet on a couple of days notice to dissolve a lien on a property to aide the sale. He felt he did not want to do this again. Ms. Kunkle said that the City was of the opinion that, regardless of who the owner is, recording a lien will spur someone to do something.

Mr. McDole said that this would be an unrecorded assessment if the Board did not authorize these liens to be filed. Mr. Shelby suggested, since there are fines running, to authorize the City to abate the nuisance. Ms. Kunkle stated that under §162 of the Florida Statutes, the Board could authorize the City to abate the nuisance, but only if these conditions posed an immediate threat to the Public.

Carol Kerrigan made a motion to authorize the City Attorney to record the liens; seconded by John Shelby. Motion carried on roll call vote 4-2 with Maggie Hawk and Jay Crocker casting the dissenting votes.

NEW BUSINESS:

C2007-0083: Tina Huckelby-Wade 1706 SR 44 [SERVED]

Permitting or causing to be permitted the operation of a business without having paid the occupational license tax in violation of §74-146 of the City Code of Ordinances.

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

Ms. Bobelak testified that Tina Huckelby-Wade signed for the certified mail on September 22, 2007, and that she had left repeated messages with her to come in to pay the occupational license tax with no response. Further, Ms. Bobelak testified that she had documentation that Tina Huckelby-Wade has been up to date with all the licenses in the past and that she claimed she would send someone in to pay the tax, but she never did.

Mr. Hofmann requested to be excused from the case, since he has had dealings with this business. Mr. McDole stated that this only applied if he had a financial interest in this matter, which Mr. Hoffman confirmed he did not.

Chairperson Slayton asked staff for their recommendation. Ms. Bobelak requested the Board find the property in violation, giving her ten (10) days to come into compliance or to pay a fine per day.

Mr. Hoffman asked if the City's Building Department could stop the business operation. Ms. Kunkle stated that it was not City policy to put anybody out of business and this matter was not over a license, but a tangible tax.

Mr. Crocker wanted to know if Ms. Huckleby-Wade was in violation of a City Code and if the Code Enforcement Board was the correct entity to address this. Ms. Kunkle affirmed that Ms. Huckleby-Wade had not paid her occupational license tax.

John Shelby made a motion to find the business in non-compliance and gave them ten (10) days to come into compliance or levy a fine of \$25 per day for each day of non-compliance; seconded by Carol Kerrigan. Motion carried unanimously on roll call vote 6-0.

**C2007-0234 Nancy W. Breiner, CO/TR 3401 S. Atlantic Avenue [Served]
Anna Kay Caulfield, CO/TR**

- (A) Permitting or causing to be permitted rubbish, sweepings, debris, trash, and waste material to be placed upon the streets, alleys, curbing or sidewalks causing a menace to traffic, either vehicular or pedestrian, and endangering the proper operation of the City's sewer or drainage system in violation of §66.36.(6) of the City Code of Ordinances.
- (B) Permitting or causing to be permitted the use of a vacant lot for parking without the required site plan approval and improvements in violation of § 303.01 of the Land Development Regulations.

Anna Caulfield was present and sworn for testimony.

Chairperson Slayton asked if she agreed with the violations, and Ms. Caulfield did not agree with them 100%.

Mr. Crocker informed Ms. Caulfield that she did not have to defend her case until City Staff presented evidence against her, and Mr. Slayton asked staff to present their evidence.

Ms. Bobelak stated that Ms. Caulfield and City staff had met on several occasions pertaining to the violations and submitted pictures of the drainage system.

Ms. Bobelak testified that Ms. Caulfield was close to being in compliance with the parking lot violation.

Mr. Shelby asked Ms. Bobelak if she was withdrawing that violation and Ms. Bobelak wanted to keep this violation on the record until it came fully into compliance.

Ms. Kunkle clarified the violations for the Board. A) Consisted of the restaurant washing grease and other matter into the storm drain, causing it to fill up completely to the top. The Public Works Department had to clean it out on several

occasions, and actually one of the complaints originated from them. B) Referred to the use of a vacant lot as a parking lot without site plan approval.

Mr. Crocker asked how staff could be sure that this was grease from Chase's. Ms. Kunkle suggested Mr. Crocker just follow the grease trail shown on the picture.

Chairperson Slayton asked Ms. Caulfield if she agreed that this was their grease going down into the storm drain. Ms. Caulfield agreed that some of it did get washed into the drain. Further Ms. Caulfield testified that she had made changes to the cleaning routine to alleviate the grease running into the storm drain and that Mr. Dempsey would be adding a second grease trap, which would not be an easy installation.

Mr. Hoffman asked Staff how long this had been going on. Ms. Bobelak stated that the first notice of violation was mailed out April 12th, 2007 and due to Ms. Caulfield's immediate response and her communication with staff, this matter had not been brought before the Board until now.

Conversation ensued between Board members expressing their concern about health issues or possible water contamination. Chairperson Slayton asked staff for their recommendation, and Ms. Bobelak suggested the Board find the property in violation, give a specified number of days to come into compliance and levy a fine per day for each day of non-compliance thereafter.

Chairperson Slayton asked staff what would be a realistic time for compliance in regards to the parking lot. Ms. Bobelak answered that the site plans are pending signatures from staff. Ms. Kunkle suggested moving the parking lot violation to January's meeting. Mr. Shelby asked if the case could be split, since the parking lot violation did not pose a health hazard, but the grease did and staff agreed that this was acceptable.

John Shelby made a motion to make part A one (1) case and part B a second case; seconded by Carol Kerrigan. Motion carried on roll call vote 5-1 with Jay Crocker casting the dissenting vote.

Carol Kerrigan made a motion to fine the property \$250 per day if part A is not in compliance within thirty (30) days; seconded by John Shelby. Motion carried on roll call vote 5-1 with Jay Crocker casting the dissenting vote.

Mr. Crocker wanted to confirm that Ms. Kerrigan's motion did not pertain to the second grease trap having to be in place within thirty (30) days, but only to cease and desist putting grease and other material into the storm drain. Ms. Kerrigan concurred.

Mr. Hoffman suggested starting the fine from April or at least from October 17th, 2007 and not giving a thirty (30) day extension. Ms. Kunkle stated that §162 of the Florida Statutes required the Board to give reasonable time to get a property into compliance. The fines are not given because of the violation, but because of failure to comply with the Board's order.

Mr. Crocker asked if it was testimony of the City staff that the grease that's coming out of Chases was sufficient to cause the sewer system to fail to operate properly?

Mr. Shelby felt that this practice was a safety concern and endangering the water supply.

Mr. Crocker stated that he was not disputing these facts, but the property was charged with endangering the proper operation of the City's sewer or drainage system. Was the system operating or not? Ms. Kunkle responded that the system did not operate properly.

In regards to part B the City requested to continue the case until the January 2008 meeting.

Jay Crocker made a motion to continue part B until the January 18th, 2008 meeting; seconded by John Shelby. Motion carried unanimously on roll call vote 6-0.

C2007-0267: Janine M. Pardee 818 9th Avenue []

Permitting or causing to be permitted a vacant structure to exist that has not been maintained in good repair so as not to pose a threat to public health and safety in violation of §303.1 of the International Property Maintenance Code, 1998 Edition.

The Board does not have any jurisdiction – the certified mail was unclaimed.

**C2007-0715: George E. and 803 E. 11th Avenue [Served]
 Karrol M. Barry
 Bruce F. and Darlene J. Barry**

Permitting or causing to be permitted the operation of a business (home occupation) that is clearly not incidental and secondary to the use of the dwelling for residential purposes, and has changed the residential character of the residence by using the property for the storage of construction equipment in violation of §801.06 (3) of the Land Development Regulations.

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

Ms. Bobelak testified that Bessy Gilligan signed for the certified mail on September 22, 2007. Ms. Bobelak continued that on several occasions there were cement mixers and a trailer w/scaffolding stored in right-of-way or in the driveway. Further, Ms. Bobelak testified that the most current photograph taken October 16, 2007 showed that the cement mixers had been removed, but the trailer with the scaffolding remained. Ms. Bobelak asked the Board to find the property in violation.

Ms. Kerrigan inquired when staff became aware of this violation and Ms. Bobelak stated that case started on September 14th, 2007. Mr. Crocker asked staff how long the trailer was parked in this location. Ms. Bobelak answered that, to her knowledge, since September 12th, 2007. There was some discussion about setting a fine. Mr. Crocker asked staff if they had seen this trailer before. Ms. Bobelak answered that this was the first time they saw the trailer, the cement mixers were the recurring problem.

John Shelby made a motion to find the business in non-compliance, and to give them ten (10) days to come into compliance or face a fine of \$25 per day for each day of non-compliance; seconded by Carol Kerrigan. Motion carried on roll call vote 5-1 with Jay Crocker casting the dissenting vote.

REPEAT BUSINESS:

DISUSSION:

Mr. Shelby asked staff about the lot mowing ordinance and abating the nuisance – what was the status and who is doing what? Ms. Kunkle responded that there was no current status. She had sent it to the City Manager's office and had not heard back in this regard. Ms. Kunkle was also waiting to find out the date and time for the workshop. Mr. Shelby stated that he would go to the November's City Commission Meeting to address this issue at the three (3) minute session, since this had been dragging on for too long. Mr. Crocker stated that he whole-heartedly agreed. He was getting tired of levying fines and he may stop supporting the City's efforts to just levy fines and liens if some other alternatives were not given to him. Ms. Kunkle stated that §162 of the Florida Statutes dictated the Board's and City Staff's actions. Mr. Crocker responded that he had the discretion. Ms. Kerrigan felt disturbed about the changes the City had made years ago to the lot maintenance program, and that she felt it was out of the desire to not have to file liens. Ms. Kunkle explained that the City incurred \$6,000, at that time, of outstanding lot mowing cost, which caused the change.

ADJOURNMENT:

John Shelby made the motion to adjourn at 5:35 pm and all agreed.

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