

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
November 13, 2007
UTILITIES COMMISSION, DEBERRY ROOM, 3RD FLOOR, 200 CANAL STREET,
NEW SMYRNA BEACH, FLORIDA

The Hearing of November 13, 2007 was called to order at 4:35 p.m. Answering to roll call:

Michael E. Slayton, Chairperson
John Shelby, Vice Chairperson - (Absent)
Maggie Hawk
Jay Crocker
Elliott Hoffman
Carol Kerrigan
Vacant Seat

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Building Official Rick McFadden, Chief Planner Gail Henrikson, 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.

None

APPROVAL OF MINUTES

Hearing held on ~~September 18, 2007~~ October 16, 2007:

Mr. Crocker made a motion to accept the Minutes of the October 16, 2007 hearing; seconded by Ms. Kerrigan. Motion carried unanimously on roll call vote 5-0.

SWEARING OF CITY STAFF:

Regina Lynne Kunkle, Code Enforcement Supervisor, Barbara Jo Bobelak, Code Enforcement Officer; Rick McFadden, Chief Building Official and Gail Henrikson, Chief Planner were sworn for testimony.

OLD BUSINESS:

C2007-0396: 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 have 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 2601 S Atlantic Avenue.

Violation of §303.2 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior wood surfaces of the buildings 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 structural members 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 the foundation walls 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 the exterior walls 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 the roofs 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 the exterior stairs and landing 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 the interior of the building 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 interior surfaces, including windows and doors, 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 and gave them 30-days to secure the buildings and grounds including but not limited to: roofs, decks, windows, fencing and balconies and continued this case to the August 15, 2006 hearing.

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

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

January 16, 2007: The Board made a motion to give Ocean Palms Beach Club, Inc. until the February 20, 2007 hearing to secure the buildings and grounds including but limited to roofs, decks, windows, fencing, balconies, soffits and to contract with a professional pest control company to remove and treat vermin issues, as well as submit a report on their plan of action to either renovate or demolish the structure with representation 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.

February 20, 2007: The Board found the subject property had been brought into substantial compliance with the Board's Order dated January 16, 2007, such that the \$250.00 per day fine would not be imposed. The Board referred the case to the Building Department for enforcement through the Unsafe or Dilapidated Structures Ordinance and the Building and Trades Board.

Mr. Reed Kyle Boardman was present and sworn for testimony.

Mr. Boardman testified that the Board of Directors for Ocean Palms Beach Club, Inc. hired him to obtain all the necessary permits and devise a plan of action.

Mr. Slayton asked Mr. Boardman if he was aware of the violations presented against Ocean Palms, and Mr. Boardman stated that he was aware but not concurring that they were accurate.

Ms. Kunkle recapped the first hearing on Ocean Palms that was held on July 18th, 2006. Ms. Kunkle continued that Ms. Hawk made the motion to find Ocean Palms in violation, seconded by Mr. Hoffman and the motion passed unanimously on roll call vote. After further testimony, Ms. Kerrigan made the motion requiring Ocean Palms to secure the Building within thirty (30) days, including but not limited to roofs, decks, fencing, windows and any exterior part that might be a problem and asked that the case be brought back before the Board on August 15th, 2006. The motion was seconded by Mr. Shelby and passed on roll call vote 4-1 with Mr. Hoffman casting the dissenting vote. Ms. Kunkle continued that these are the same violations that Mr. Bledsoe (former President of Ocean Palms Beach Club Condo Association) stipulated to at the time of that hearing.

Ms. Kunkle asked the Board to fine Ocean Palms Beach Club, Inc., since there had been no major progress made other than the submittal and revisions of a few plans, and that no permits had been obtained or work commenced.

Carol Kerrigan said that this case was supposed to be transferred to the Building Trades Board.

Ms. Kunkle stated that, to her knowledge, the case never went before the Building Trades Board.

Mr. Crocker stated that the City wanted to bring this case before the Building and Trades Board rather than the Code Board, since the more appropriate remedies would have been available there. Mr. Crocker continued that on February 20, 2007 the Board found the subject property in substantial compliance and would not be imposing a fine and per the minutes the Board asked for this case to be transferred to the Building Trades Board. Mr. Crocker asked if the City did not opt for this transfer.

Ms. Kunkle answered that she did not know who opted not to take this case before the Building and Trades Board, and that this Board was affiliated with the Building Department. Ms. Kunkle went on to clarify that the phrase "brought the subject property into substantial compliance by February 20, 2007" referred to Ocean Palms complying with the Board's Order of January 16, 2007 in regards to getting the property/building secured. However, Ocean Palms never complied with the original order from July 18, 2006 finding them in violation of the City's codes.

Mr. Slayton asked Code Enforcement Staff about their recommendation. Ms. Kunkle answered that Ocean Palms has had reasonable time and deferred the question to Mr. McDole.

Mr. McDole answered that a motion was needed giving Ocean Palms an exact date to correct the violations to avoid being assessed a fine.

Mr. Crocker agreed and asked Mr. McDole to advise about having the respondent indicate what he believed the corrected items were. Mr. McDole stated that Ocean Palms might be in compliance now. The Board never gave them an exact date to come into compliance, they did not appeal that order, and so the Board can't reverse it.

Mr. Crocker inquired if it was pertinent for the Board to know which violations had been remedied at present. Mr. McDole stated that the Board couldn't open up the findings of non-compliance from July, but they could take that into account when posing any kind of a fine.

Mr. Boardman was asked to speak. Mr. Boardman stated he was not aware of anyone stipulating to these violations. He continued that Mr. McFadden, Chief Building Official, found all structures to be sound and free from structural damage as implied in the violation document. Mr. Boardman felt that there were agendas outside of just trying to find a solution to the problem. He stated that there seemed to be some lack of clarity about the phrase "brought into substantial compliance". Ocean Palms interpreted that as being in compliance with all violations, whereas now it was being said that the substantial compliance only pertained to the Board's Order of securing the building. Mr. Boardman said he had met with Mr. McFadden, Chief Building Official and Mr. Rakowski, Development Service Director for the City of New Smyrna Beach to set up a

plan of action that was presented to the City Council. Mr. Boardman further testified that in this plan, Mr. Rakowski required Ocean Palms to obtain a Level 2 site plan in addition to a complete set of building plans for the renovation. Mr. Boardman continued that they were working with an architect to produce documents, which were submitted to the City and re-submitted. Ocean Palms had voluntarily elected to upgrade the buildings to include a fire system not required under the code. A permit had not been issued as of yet, due to minor concerns that should be addressed within two (2) weeks. Mr. Boardman said he anticipated the total renovation to take anywhere from twelve (12) to eighteen (18) months and that he would be happy to provide a demolition/construction schedule, once it had been created. Mr. Boardman felt that the Board imposing a fine now would be counterproductive, since they were doing the many things required to bring the property into compliance.

Ms. Kerrigan asked Mr. McFadden if he concurred with Mr. Boardman's report about permitting. Mr. McFadden stated that Fire Safety Management and he had approved the plans presented to them. They were waiting for five (5) items (fill, decking indications on site plans x 2, missing elevation, A/C unit placement) to be addressed for Planning and Zoning.

Mr. Slayton asked Mr. McFadden if he was familiar with the violations and if any of these violations were still occurring at the subject property.

Mr. McFadden testified that some corrections had been made and the buildings were structurally sound.

Mr. Hoffman asked a question about sinking pilings and Mr. McFadden stated that there were no pilings and the uneven part had been filled in, to his satisfaction.

Mr. Crocker asked Mr. McDole if the Board had the authority to set interim benchmarks to be met along the way or were they limited to just set a date for complete compliance. Mr. McDole answered that benchmarks were appropriate. For example, obtaining the required permits could be the first benchmark, continued with commencement of construction, substantial completion and full completion, requiring full compliance by a certain date.

Ms. Kerrigan said that she objected to this method. She felt, deciding on the timetable should be left to the people with technical training in the construction field. Mr. McFadden mentioned that some contractors were not able to meet their construction/renovation schedules. There was some discussion between Mr. Boardman, City staff and the Board in regards to being able to meet a construction schedule. Ms. Kerrigan said that she would be okay to have the case brought back before the Board six (6) months after the building permit had been issued for a progress report, since this was a big project and that in her opinion it was better to save a building than to tear it down.

Mr. McDole stated that the Board's rules of procedure provide that "the order shall further state a time which said violation shall be brought into code compliance", so it

was mandatory in the Board's rules that a specific date be set, even though it was discretionary in the State Law.

Mr. Boardman said he disagreed with this line of thinking in regards to putting a time element on this project. He asked some questions about coming into compliance during the rebuilt/remodel of the subject property.

Mr. Hoffman asked Mr. Boardman about violation §304.3, inquiring if Mr. Boardman had been able to produce any documentation that he had contracted with a pest control company. Mr. Boardman stated that he did not have any documentation today, however, a pest control company had been out and confirmed that the property was pest free, due to a lack of food and water sources. Mr. Hoffmann expressed his concern that children may enter the premises and leave their rubbish behind and Mr. Boardman was adamant that no children have access to the buildings. Further Mr. Boardman testified that on three occasions, personnel checking the building have left the building unsealed, and he had addressed this issue with them. Mr. Boardman stated there was no other evidence of vagrants and suggested the Board go out to inspect the subject property individually.

Mr. Boardman also testified that he felt that one could stay there after some basic cleaning.

Mr. Slayton asked Mr. Boardman why nothing happened in the past nine (9) months if only basic cleaning was required. Mr. Boardman answered that permitting was the reason and he could document every single step.

Ms. Kunkle informed the Board that Ocean Palms submitted plans on June 4th, 2007; revisions were submitted on September 28, 2007; that the permit was on the shelf at the Building Dept 10/3/07, and resubmitted siteplans on 11/9/07.

Mr. Keith Gerhartz, residing at 2808 Hill Street was sworn for testimony.

Mr. Gerhartz said he was representing the South Beach Neighborhood Association and that he felt that the problem was the Goodwill Capital that Mr. Boardman was awarded, had run out. Further, Mr. Gerhartz brought up the subjects of title problems, mold emanating from the property and that if the Board requested, he would bring back an individual who had a doctor's note stating that this mold added to his upper respiratory problems. Mr. Gerhartz said he felt that Mr. Boardman made lots of promises and no action was taken. Mr. Gerhartz recalled Mr. Boardman stating at one of the Commission meetings in the beginning of 2006 that he would have site plans submitted by November 2006, and per Ms. Kunkle's information he did not submit them until June 2007. Mr. Gerhartz attested to openings in the building and that he felt that these openings were not the result of personnel as Mr. Boardman stated. Mr. Gerhartz continued that there was a lack of transparency and that any repairs and corrections had typically only been made when Mr. Boardman's back was placed against the wall.

Mr. Gerhartz was in favor of levying fines and leniency once the established benchmarks had been reached and that Mr. Boardman needed a little motivation.

Mr. Boardman retorted that the comments made by Mr. Gerhartz were categorically untrue that there might be mildew but denied the prolific mold. Mr. Boardman acknowledged problems, but stated that a plan of action to correct them was in effect. Mr. Boardman said numerous Time-share condominiums were in the same situation as Ocean Palms due to the hurricanes.

Mr. Hoffman asked Mr. Boardman how come there was no mold in the building since there were issues with the roofs and the buildings were located beachside.

Mr. Boardman stated that there was very little roof damage to its foam roof and it had been sealed.

Ms. Kerrigan said she felt that the meeting was getting off track and irrelevant items were being discussed. Further Ms. Kerrigan stated that building related issues should be handled by the Building Department, since they were trained in that field, and suggested a motion to give Ocean Palms a certain amount of time to obtain the required permits, and that should the permits expire or should Ocean Palms fail to secure the permits by January, the Board should reconvene and impose a fine.

Mr. McDole interjected that that motion would be contrary to the rules of the statute, which require a specific date to be set for total completion.

Mr. Crocker asked Mr. McDole if it was necessary for Ocean Palm to have the buildings finished and if a Certificate of Occupancy (CO) had to be issued before they were in compliance, or if the violations just had to be corrected.

There was some renewed discussion between Mr. Boardman and Mr. Crocker about the interpretation of the February 20, 2007 "brought into substantial compliance" statement.

Ms. Kerrigan made the motion for Ocean Palms Beach Club, Inc. to secure the necessary permit(s) by January 15th, 2008 and come into full compliance with all the violations listed by the March 2008 Code Board meeting or face a fine. The motion died for a lack of a second.

Mr. Crocker made the motion to give Ocean Palms Beach Club, Inc. three (3) weeks from November 13th, 2007 to secure the necessary permit(s) or face a fine of \$250.00 per day for each and every day said permit(s) were not secured; seconded by Ms. Hawk. The motion carried on roll call vote 3 – 2 with Mr. Hoffmann and Ms. Kerrigan casting the dissenting votes.

Mr. Crocker asked Mr. McFadden for a realistic and reasonable timetable from permitting to full compliance with all listed violations and if a CO was needed for Ocean

Palms to be in full compliance. Mr. McFadden was not able to give a specific date due possible unforeseen circumstances during the renovation process. He felt that the project could be completed within one hundred and twenty (120) days from start of construction.

Mr. Slayton stated that the Board could always amend the full compliance date and Mr. McDole confirmed that statement.

Mr. Crocker made the motion to give Ocean Palms Beach Club, Inc. one hundred fifty days (150) days from November 13th, 2007 to come into full compliance with all violations or face a fine of \$250.00 per day for each and every day the subject property was not in compliance; seconded by Ms. Hawk. The motion carried on roll call vote 4 – 1 with Mr. Hoffmann casting the dissenting vote.

Mr. Boardman asked who determined if the subject property was in compliance. Mr. Slayton answered it would be Ms. Kunkle. Mr. Slayton stated that this case was officially closed for this meeting.

C2006-0511: Anthony G. DeCamillis 402 Flagler Ave. [SERVED]

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 in violation of §301.3 of the International Property Maintenance Code, 1998 Edition.

October 17, 2006: the Board continued this case to the 20th day of February, 2007.
February 20, 2007: The Board continued this case until the 15th day of May 2007.

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

Ms. Bobelak testified that the certified mail was signed for by one of the owners. Ms. Bobelak read from an email sent by Mr. DeCamillis explaining that the contractors were in place and they were waiting for the variance. Ms. Bobelak addressed Gail Henrikson, Chief Planner about the time frame for a variance. Ms. Henrikson stated if Mr. DeCamillis submitted the variance application by Thursday, November 15, 2007, it would go to the December 20, 2007 Board of Adjustment for a decision. Ms. Henrikson continued that their siteplans were approved on September 15, 2007 and were good for two (2) years and they had been making progress.

Mr. Slayton asked Ms. Bobelak and Ms. Henrikson if they recommended this case to be continued until the January 2008 meeting. They both concurred.

Ms. Kerrigan made a motion to continue this case until the January 15th, 2008 hearing; seconded by Ms. Hawk. Motion carried unanimously on roll call vote 5-0.

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.

October 16, 2007: The Board found the subject property in non-compliance and gave Tina Huckelby-Wade 10 days to come into compliance or face a fine of \$25/day for each day the property is in non-compliance.

Fine Totaling: \$450.00 for a total of 18 days as of today.

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

Ms. Bobelak stated that Ms. Huckelby-Wade signed for the certified mail on October 27, 2007 and that the Finance Department received a check for \$75.00 on October 30, 2007, which left a balance due of \$86.37 at this time. Ms. Bobelak further explained that she had spoken with Ms. Huckelby-Wade's receptionist and was told someone would be in to pay the remaining balance, but no one did. Ms. Bobelak's recommendation was for the Board to authorize the City Attorney to record a lien against the property.

Ms. Kerrigan made a motion to authorize the City Attorney to record a lien; seconded by Mr. Crocker. Motion carried on roll call vote 4-1 with Mr. Hoffman casting the dissenting vote.

C2007-0100:

Bouchelle Island

301 Harbour Blvd.

[SERVED]

Community Services Association, Inc.

Permitting or causing to be permitted construction (docks, electrical, plumbing, and sewer pump-out system) without the required permits.

April 17, 2007: The Board found Bouchelle Island Community Services Association, Inc. in non-compliance.

Ms. Nancy Murphy was present and sworn for testimony.

Ms. Murphy referred to a letter from DEP (Department of Environmental Protection) received on October 25, 2007 and a telephone conversation with DEP about ten (10) days ago addressing the State Lands Title Determination, and whether this property would need a SSL or not. Further, Ms. Murphy said a new survey, to delineate the shoreline distance, was sent to the DEP, and presented a copy of the check sent to Allen Engineering for 16,292.95.

Mr. McFadden stated that the pumping station was put in about three (3) years ago without any permits. Mr. McFadden further testified that the City became aware that the pumping station had been extended and due to a lack of permits, couldn't be sure that it met City codes or safety regulations.

Ms. Murphy explained that the pumping station was currently shut down.

Ms. Kunkle commented that Tallahassee was determining, due to the distance of the shoreline, if Bouchelle Island had to re-enter into a submerged land lease. Ms. Kunkle's recommendation was for this case to be continued until the March 2008 hearing.

Mr. Crocker made a motion to continue this case until the March, 2008 hearing; seconded by Ms. Hawk. Motion carried unanimously on roll call vote 5-0.

C2007-0396: Joey Price 605 Downing [SERVED]

Permitting or causing to be permitted a building 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 in violation of §108.1.1 of the International Property Maintenance Code, 1998 Edition.

August 21, 2007: The Board found the property in non-compliance and to bring the case back to the hearing on the 16th day of October, 2007.

October 16, 2007: The Board continued this case until the 13th day of November.

Mr. Derrick Price was present and sworn for testimony.

Mr. Price gave the Board an update of their progress, stating they received the new plans on November 13, 2007 and were now ready to submit for permitting.

Ms. Bobelak recommended the Board continue the case until the January 15, 2008 hearing.

Ms. Kerrigan made a motion to continue this case until the January 15th, 2008 hearing; seconded by Ms. Hawk. Motion carried unanimously on roll call vote 5-0.

**C2007-0715: George E. and 803 E. 11th Avenue [SERVED]
In compliance Karrol M. Barry
10.25.07 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 to the use of the dwelling for residential purposes, and has changed the residential character of the residence by

Mr. Slayton made the motion to adjourn at ~~4:35 pm~~ 5:45 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