

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
APRIL 18TH, 2006
UTILITIES COMMISSION, 3RD FLOOR, DEBERRY ROOM, 200 CANAL STREET
NEW SMYRNA BEACH, FLORIDA

The Hearing of April 18th, 2006 was called to order at 4:28 p.m. Answering to roll call:

Michael E. Slayton (Chairperson)

John Shelby (Vice Chairperson)

Maggie Hawk

Jay Crocker

Elliott Hoffman

Susan Ellis

Carol Kerrigan

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, City Attorney Frank Gummey and Administrative Specialist Inga Campbell.

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 Slayton stated for the record there were no disclosures.

APPROVAL OF MINUTES

March 21st, 2006

Jay Crocker made a motion to approve the minutes as written; seconded by Carol Kerrigan. Motion passed unanimously on roll call vote 7-0.

SWEARING OF CITY STAFF:

Regina Lynne Kunkle, Code Enforcement Supervisor and Barbara Jo Bobelak, Code Enforcement Officer were sworn for testimony.

OLD BUSINESS:

C2005-0571: TT of NSB, Inc. C/O New Smyrna Chrysler Jeep Dodge [Served]

Violation of §604.05 I. by failing to maintain the landscaped areas and irrigation systems in perpetuity and by permitting nine (9) replacement trees to die within the first year of planting at 1300 N. Dixie Freeway.

November 15, 2005: The Board found this case in violation and continued this case until January 17, 2006.

January 17, 2006: The Board continued this case until the April 18, 2006.

Chris Riley was sworn for testimony.

Chairperson Slayton asked Mr. Riley if he was aware of the violations brought against him.

Mr. Riley stated he was aware and agreed to the violations. Mr. Riley stated he was still struggling to get green on the trees; however, his landscaper states the trees are alive though.

Ms. Kunkle had taken pictures of the trees on the property dated 4/18/2006 and asked Mr. Riley if these pictures were accurate before submitting them for the Board's review.

Mr. Riley stated the pictures were accurate. Mr. Riley stated the picture of the leaning tree someone had hit recently.

Ms. Kunkle asked Mr. Riley when his landscaper expected the trees to leaf out and turn green.

Mr. Riley stated the landscaper did not give him that information. Mr. Riley stated the landscaper told him the trees would survive. Mr. Riley stated the trees are being irrigated and a shrub and tree care company had also been hired to ensure improvement on their properties.

Ms. Kunkle stated the Board would not have a meeting in June; therefore, it was the City's recommendation to continue this case until the July 18, 2006 meeting.

Mr. Crocker asked when these trees were planted.

Mr. Riley stated these trees were planted in November 2005 the same week after the first meeting on November 15, 2005.

Carol Kerrigan made a motion to continue this case until the July 18, 2006 meeting; seconded by Susan Ellis.

Mr. Hoffman asked if the trees were being fertilized.

Mr. Riley stated the trees were being fertilized by the landscape company and now since the new hire of the shrub and tree care company they are fertilizing them.

Motion passed unanimously on roll call vote 7-0.

C2006-0020: Charles G. Baldwin

[Served]

Violation of §74-146 of the City Code of Ordinances by permitting a Business operation (Real Estate Agent) without having paid the occupational license tax located at 216 Flagler Avenue.

October 18, 2005: The Board continued this case until March 21, 2006.

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

Ms. Bobelak stated this case was in compliance by receiving the occupational license on March 22nd, 2006.

Susan Ellis made a motion finding this case in compliance; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

C2006-0098: Arthur J. Sullivan, Jr.

[Served]

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

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

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

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

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

Arthur J. Sullivan, Jr. was sworn for testimony.

Chairperson Slayton asked Mr. Sullivan if he understood and agreed the violations brought against him.

Mr. Sullivan stated he understood the violations but did not agree that his truck is in excess of one (1) ton.

Ms. Kunkle stated that she and Ms. Bobelak met with Mr. Sullivan on 4/17/06 as well as visited the property this morning. Ms. Kunkle stated she and Ms. Bobelak agreed to ask the Board to continue this case until the July 18th, 2006 meeting to allow him enough time to finish cleaning the property and if needed Staff would find someone to help Mr. Sullivan with the clean up and Staff would make a final determination with the one (1) ton truck. Ms. Kunkle stated Mr. Sullivan had made progress with the clean up.

Ms. Bobelak presented pictures to Mr. Sullivan of his property taken on 4/18/06 as well as pictures from the previous meeting for verification before presenting to the Board for their review.

Mr. Crocker asked Staff if there was still an impasse as to whether or not this truck has a rating that makes it improper.

Ms. Kunkle stated Staff discussed this issue with Mr. Sullivan in some length and Staff wanted additional time to research that particular truck. Ms. Kunkle stated during Staff's visit this morning the truck had a label stating that truck's capacity is nine (9) ton.

Mr. Crocker asked Staff if the truck was labeled as having a capacity of nine (9) tons and if it was documented within the photographs taken this morning.

Ms. Kunkle stated it was labeled showing nine (9) ton capacity and documented within the photographs before the Board today.

Mr. Crocker asked Mr. Sullivan if he recognized the photograph showing the label of the rating capacity of that truck.

Mr. Sullivan stated he recognized the label but he does not believe that truck has a nine (9) ton capacity. Mr. Sullivan stated the gross vehicle weight is about the same as a F350, which is about 13,000 to 14,000 lbs., the same as a one (1) ton truck. Mr. Sullivan stated a half-ton truck pickup weighs 6,000 lbs. loaded, which is not a half-ton truck. Mr. Sullivan stated generically speaking classifications of trucks as relative uses. Mr. Sullivan stated a one (1) ton truck might be a van, a suburban, a dump truck, a bread truck or a UPS truck. Mr. Sullivan stated he should get the same latitude as the local mason's truck. Mr. Sullivan stated he was on a dead-end street and did not see where there was an eyesore.

Mr. Hoffman asked Mr. Sullivan if he had the registration card as to how the State of Florida registered this vehicle and what they consider the tonnage of the truck.

Mr. Sullivan stated he could not remember that information and he did not have the registration card.

Ms. Kerrigan asked Mr. Sullivan what use the truck served.

Mr. Sullivan stated he had not been using the truck; however, he does not want to get rid of the truck.

Ms. Kerrigan asked Staff if they recommended continuing this case until July 18th, 2006 at which time Staff would come back with the information regarding the truck at that time.

Ms. Kunkle stated that was correct and Staff had found some information on the Internet regarding this specific vehicle and are still working on the information found on the truck that was obtained today.

Carol Kerrigan made a motion to continue this case until the July 18th, 2006 meeting; seconded by Elliott Hoffman.

Mr. Crocker stated the minutes of the prior meeting indicated Mr. Sullivan would bring in the registration this meeting and did not.

Mr. Sullivan stated he did not hear that because he is hard of hearing.

Mr. Crocker stated he would vote against the motion because it did not contain a finding of violation.

Ms. Kerrigan stated part of the problem is that the City Staff is unsure if Mr. Sullivan could be legal regarding the one (1) ton vehicle.

Ms. Kunkle stated the City is absolutely positive that this is a commercial vehicle in excess of one and a half (1 ½) ton rated capacity, based on the information on the website, and finding that these trucks are rated commercial light, medium or heavy and after finding the nine (9) ton capacity plate on Mr. Sullivan's truck. Ms. Kunkle further stated that Staff would like to have the additional time requested so they can explain, to Mr. Sullivan, the difference between the Code Enforcement F150 or any F150 found in any residential neighborhood and Mr. Sullivan's truck.

Carol Kerrigan asked Mr. Gummey if she could withdraw her motion.

Mr. Gummey stated she could withdraw her motion.

Mr. Crocker asked Staff if violation number 4 is in compliance regarding the recreational vehicles.

Ms. Bobelak stated he was in compliance of violation number 4.

Mr. Crocker asked Staff if violation number 3 was the truck in excess of one (1) ton that is still in question as to the rating of the truck.

Ms. Bobelak stated that was correct.

Mr. Crocker stated the first two violations were similar in verbiage with the exception of the language regarding encroaching upon a public street. Mr. Crocker asked Staff if there was still an encroachment on a public street.

Ms. Bobelak stated there was some encroachment on a public street; however, Mr. Sullivan stated some of these items had been removed since this morning.

Jay Crocker made a motion to find Mr. Sullivan in violation of the first two (2) violations listed, to continue this case to July 18th, 2006 for further deliberation on whether the third violation had been substantiated and to find Mr. Sullivan in compliance with the fourth violation; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

Mr. Gummey told Mr. Sullivan that the Board found him in violation of paragraph 1 and paragraph 2, continued consideration of paragraph 3 until the July 18th, 2006 meeting and in compliance on paragraph 4.

Ms. Kunkle stated the Board's Order would be fully spelled out for Mr. Sullivan and Staff would speak with him as well.

Mr. Crocker asked Staff to ensure Mr. Sullivan bring his vehicle registration to the July 18th, 2006 meeting.

Mr. Sullivan requested the City's definition of a one (1) ton truck.

Ms. Kunkle informed Mr. Sullivan that Staff would schedule another meeting with him in attempt to answer that question; however, she is uncertain if the City has a definition for a one (1) ton truck.

NEW BUSINESS:

C2006-0107: Keith G. Schultz

[Served]

Violation of §38-31 of the City Code of Ordinances by permitting or causing to be permitted storage of inoperable vehicles upon the subject property located at 2549 Crestwood Avenue.

Violation of §38-111 of the City Code of Ordinances by permitting or causing to be permitted discarded and abandoned waste material and weeds and undergrowth upon the subject property located at 2549 Crestwood Avenue.

Chairperson Slayton stated for the record there was no one present to represent this case.

Ms. Bobelak stated she had no contact with the property owners. Ms. Bobelak presented pictures of the property to the Board she took showing the inoperable vehicles as well as the weeds and undergrowth. Ms. Bobelak stated the Certified Return Receipt Request was signed on 4/1/06.

Mr. Crocker asked Staff who took the photographs.

Ms. Bobelak stated she and Ms. Kunkle both had taken these photographs.

Mr. Crocker asked Ms. Bobelak when she took the photographs.

Ms. Bobelak stated the photographs were taken this morning.

Ms. Ellis asked Staff if the red truck was inoperable.

Ms. Bobelak stated that the photograph was to show the weeds and undergrowth and that vehicle did not appear to be inoperable.

Mr. Crocker asked Staff how they knew the alleged inoperable vehicle was in fact inoperable.

Ms. Bobelak stated the photographs would speak for themselves. Ms. Bobelak further stated the few times she had driven by the home it is difficult to tell if the owners are living in the home.

Mr. Shelby asked Staff if there were current tags on the inoperable vehicle.

Ms. Bobelak stated that could not be determined from the street.

Ms. Kerrigan asked Staff if the notice was served at that location.

Ms. Bobelak stated the notices were served at that location.

Ms. Bobelak stated the City recommended fifteen (15) days to bring the violation into compliance or “X” amount of dollars if not in compliance at that time.

Mr. Crocker stated the weeds as described in the violation could not be determined as they are blocked from the weeds that are before the fence. Mr. Crocker asked Ms. Bobelak if she personally saw weeds and under oath she saw weeds.

Ms. Bobelak and Ms. Kunkle both stated that they are under oath and that they saw weeds on the property.

Maggie Hawk made a motion finding Mr. Schultz in violation giving him fifteen (15) days to come into compliance or pay a \$50.00 per day fine; seconded by Carol Kerrigan. Motion passed unanimously on roll call vote 7-0.

C2006-0190: Michael Scott Wood [Certified RRR Attempted/Posted]

Violation of §102.2 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted a structure to exist with the equipment, systems, devices and safeguards required by the International Property Maintenance Code, a previous regulation, or the code under which the structure was constructed, altered or repaired, to no longer be maintained in good working order located at 2506 Hill Street.

Violation of §108.1.3 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted a structure to exist that is unfit for human occupancy because, of the degree to which the structure is in disrepair, is insanitary, lacks ventilation, illumination, sanitary facilities, heating facilities and other essential equipment required by the International Property Maintenance Code located at 2506 Hill Street.

Chairperson Slayton stated for the record there was no one present to represent this case.

Ms. Kunkle stated the City recommended the Board give Michael Scott Wood until the July 18th, 2006 meeting to bring this case into compliance or face a \$250.00 per day fine. Ms. Kunkle stated she had all the signed paperwork for the application for demolition permit package. Ms. Kunkle stated the gas company along with the Utilities Commission have both been notified for the disconnects. Ms. Kunkle stated this process could take up to a couple of weeks; therefore, it would take the Building Department a little time before the permit could be issued. Ms. Kunkle stated the local Fire Marshal as well as the Building Official would be required to walk this property and sign to approve the demolition. Ms. Kunkle presented photographs of the property for their review taken on 5/18/04 before the hurricane season as well as photographs taken 10/19/04.

Ms. Ellis asked Staff why the demolition process takes so long.

Ms. Kunkle stated at the time there was an engineer from Georgia that had been working on the structure then after Hurricane Charley Steve Clancy secured the bracing and the roof structure system. Mike Dyer, who was the interim City Attorney, advised the City and this Board to handle this differently.

Ms. Hawk asked Staff if this structure was a safety hazard.

Ms. Kunkle stated the structure is concrete block but the true hazard to the neighborhood is gone, which was the third floor, the roof system and the staircase.

Carol Kerrigan made a motion finding Michael Scott Wood in non-compliance of the stated codes and gave Mr. Wood until the July 18th, 2006 meeting to bring this case into compliance or begin a fine of \$250.00 per day beginning on July 19th, 2006; seconded by Maggie Hawk.

Mr. Crocker asked Mr. Gummey if Ms. Kunkle could have made this a repeat violation because this case was found in violation several years ago.

Mr. Gummey asked Staff if the records were present today.

Mr. Crocker stated he had institutional memory.

Chairperson Slayton asked if this was the same owner as before.

Ms. Kunkle stated it was the same owner as before.

Motion passed unanimously on roll call vote 7-0.

DISCUSSION:

No discussion.

ADJOURNMENT:

Susan Ellis made a motion to adjourn; seconded by Jay Crocker. All agreed and the Board adjourned at 5:10 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 Campbell
Administrative Specialist
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2242
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