

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING HELD AT 4:30 P.M.  
JANUARY 18<sup>th</sup>, 2005  
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE  
NEW SMYRNA BEACH, FLORIDA

The Hearing of January 18<sup>th</sup>, 2005 was called to order at 4:30 p.m. Answering to roll call:

Maggie Hawk, Chairperson  
John Shelby, Vice Chairperson  
Michael E. Slayton  
Jay Crocker  
Elliott Hoffman  
Carol Kerrigan  
Absent:  
Susan Ellis

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

**APPROVAL OF MINUTES**

October 19<sup>th</sup>, 2004  
November 17<sup>th</sup>, 2004  
December 1<sup>st</sup>, 2004

**Michael Slayton made a motion to approve the minutes; seconded by John Shelby. Motion passed unanimously on roll call vote 6-0.**

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

**OLD BUSINESS:**

**CASE NO:** CE-032-01-020

Raymond Lubrani  
803 Oakwood Avenue  
New Smyrna Beach, FL 32169

Violation Location: 803 Oakwood Avenue

- A. Permitting or causing to be permitted construction without the required permit(s) in violation of §304.00A of the Land Development Regulations.
- B. Permitting or causing to be permitted the storage of building materials on a residential lot for which a building permit is not in effect in violation of §802.01 of the Land Development Regulations.
- C. Permitting or causing to be permitted the storage of vehicles without current license plates on a residentially zoned lot in violation of §802.02 of the Land Development Regulations.
- D. Permitting or causing to be permitted the storage of two (2) pieces of major recreational equipment in the front yard in violation of §802.05 of the Land Development Regulations.
- E. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property §38-113 of the City Code of Ordinances.
- F. Permitting or causing to be permitted the open storage of inoperable vehicles in violation of §307.4 of the Standard Housing Code, 1997 Edition.

**Raymond Lubrani was present and sworn for testimony.**

**Mr. Lubrani testified that he disassembled the structure that was in violation.**

**Ms. Kunkle testified that construction without permits was the remaining issue before the Board and submitted pictures of the structures that had previously been submitted as evidence and pictures submitted by Mr. Lubrani that showed the structures had been removed.**

**The Board determined that Mr. Lubrani had brought the subject property into compliance in accordance with the Board's previous Order.**

**Jay Crocker made a motion to find the property in compliance and to close this case; seconded by John Shelby. Motion passed unanimously on roll call vote 6-0.**

**CASE NO:** C2004-0330  
In compliance

David Conway  
329 Sweet Bay Avenue  
New Smyrna Beach, FL 32168

Violation Location: 2604 N. Dixie Freeway

- A. Permitting or causing to be permitted a vacant structure, which has not been maintained in a clean, safe and sanitary condition.

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

**Ms. Kunkle testified that the subject property had been demolished and that it was in compliance.**

**Michael Slayton made a motion to find the property in compliance; seconded by Jay Crocker. Motion passed unanimously on roll call vote 6-0.**

**CASE NO:** C2004-0354

Tiro Beachwear, Inc.  
701 3<sup>rd</sup> Avenue  
New Smyrna Beach, FL 32169

Violation Location: Saxon Drive

- A. Permitting or causing to be permitted the removal of 14 trees without the required tree removal permit.

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

**Lynne Kunkle testified that the owner was currently out of the country and requested the Board to grant a continuance until the February 15, 2005 hearing.**

**Carol Kerrigan questioned the City staff as to how long this case had been going on.**

**Ms. Kunkle explained to the Board that Mr. Sharibani was having a problem getting an architect and that the City did not want the trees replaced on the Saxon Drive lot if they were going to interfere with Mr. Sharibani's proposed use. Further, Ms. Kunkle explained that the City does not have a tree replacement fund that Mr. Sharibani could contribute to.**

**Jay Crocker made a motion to continue the case until the February 2005 meeting; seconded by Michael Slayton. Motion carried unanimously on roll call vote 6-0.**

**CASE NO:** C2004-0649

Michael J. Reed  
909 Canal Street  
New Smyrna Beach, FL 32168

Violation Location: 909 Canal Street

- A. Permitting or causing to be permitted dirt bike activities on the subject property.
- B. Permitting or causing to be permitted the construction of ramps and the creation of a dirt bike track upon the subject property.
- C. Permitting or causing to be permitted ramps in the required side yard.

**Michael J. Reed and Thomas A. Harowski, Development Services Director was present and sworn for testimony.**

**Mr. Reed explained to the Board that he has been to the police station and contacted Officer Dean and that she told him there is no law against riding his 49cc toy in his yard and that they consider under 50cc motor vehicles a toy and they are allowed on your private property.**

**Mr. Reed further explained to the Board that the wooden structures, including his dog's house were removed from his property and that he felt that no code or laws are being broken. Mr. Reed went on to say that he erected a six-foot wooden privacy fence around the entire yard so that the neighbors do not have to see his property.**

**Mr. Reed presented the Board, as evidence, a piece of paper with signatures of surrounding neighbors with the exception of Marshall Smith, stating that his bike activity does not bother them visually nor does the noise bother them and that this does not disrupt them in anyway what so ever.**

**Mr. Reed reiterated that he has done nothing wrong and simply owns a piece of property that he uses every now and then to have some fun.**

**Chairperson Hawk explained to Mr. Reed that what really needs to be established is whether or not there is a law that applies or not.**

**Ms. Kunkle testified that these are violations of the Land Development Regulations, Ordinance 1-91 and assured the Board that Mr. Reed would not be accused of a violation if in fact he was not violating a local law and that it is her best guess that the Police Department is referring to state statutes, not zoning laws.**

**Member Jay Crocker asked if staff had been able to verify that the ramps had been removed.**

**Ms. Kunkle testified that the wooden ramps had been removed but that the dirt ramps remain. Ms. Kunkle submitted pictures that staff had taken earlier that day to the Board for their review.**

**Ms. Kunkle asked that Mr. Harowski address the Board.**

**Mr. Harowski testified to having visited the site and saw the earth mounds. Mr. Harowski continued his testimony regarding the accessory use to the primary principal use, using examples such as a basketball goal at the driveway or a swing in the back yard, which is clearly accessory to the principal use. Further, Mr. Harowski testified that based on his responsibility to interpret the code and his experience of thirty-some years of working with Land Development Regulations, it is his opinion that under the code the creation of, essentially a motor-cross track in the back yard is not a customary accessory use to a residential activity.**

**Member Jay Crocker asked Mr. Harowski if it was possible that the permissible uses could vary depending on the amount of use, using the example of having five on five basketball tournaments, five hours out of a day, two days per week, and whether or not his use of that basketball goal could become a non-permitted use.**

**Mr. Harowski testified that there comes a point with some of the uses where scale enters into whether it is a normal accessory use and used the example of placing a hoop beside the road and the children play there periodically as opposed to someone who turns their back yard into a full court, lighted basketball facility with goals at each end.**

**Mr. Crocker asked if staff knew the complainant and whether or not the complainant would be willing to testify. Ms. Kunkle informed the Board that the complainant would not be able to testify and that Mr. Harowski, Attorney Mark Hall, Code Enforcement Officer Barbara Bobelak and herself had previously met with the complainant.**

**Mr. Reed continued with additional testimony regarding the use of his toy that he feels is not bothering anyone except for one complainant, and that no one else has complained.**

**Ms. Kunkle showed Mr. Reed copies of four additional complaints and submitted them to the Board for their review.**

Conversation between Mr. Reed and the Board continued regarding the dirt ramps. Mr. Reed stated he does not have ramps and this is his landscaping. Member Jay Crocker asked Mr. Reed if he drives a mini bike over the dirt landscaping with Mr. Reed responding that he rides his mini bike over all of his plants.

Conversation among the Board members continued regarding previous testimony from Mr. Reed and the number of people using his yard, riding the mini bike in the yard, the use of the motor-cross track, and whether or not this is a customary accessory use to the primary principal use.

Jay Crocker made a motion to give Mr. Reed two weeks to remove the offending structures as addressed by violations "B" and "C" or face a fine of \$100.00 per day, and to take no action on violation "A" and to bring the case back before the Board for review after the offending components in "B" and "C" have been removed to see if the activities have decreased. Seconded by Maggie Hawk. Motion passed unanimously 6-0.

**CASE NO:** C2004-0650

Gregg Neill  
Our Back Yard  
1301 Canal Street  
New Smyrna Beach, FL 32168

Violation Location: 1301 Canal Street

- A. Permitting or causing to be permitted the operation of a prohibited business (outdoor vendor) upon the subject property.
- B. Permitting or causing to be permitted the erection of signs without the required permit.
- C. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property.

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

**Barbara Bobelak testified that the subject property was in compliance.**

**Michael Slayton made a motion to find the property in compliance; seconded by Jay Crocker. Motion passed on roll call vote 6-0.**

**CASE NO:** C2004-0962

R & B LLC  
96 Cedar Dune Drive  
New Smyrna Beach, FL 32169

Violation Location: 690 3<sup>rd</sup> Avenue

- A. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property.
- B. Permitting or causing to be permitted the placement of garbage containers at the roadside for pickup prior to sundown on the day next proceeding the regularly scheduled collection day.
- C. Permitting or causing to be permitted deviation from the approved site plan:
  - 1. The parking lot is not completely paved and striped.
  - 2. A portion of the paved parking lot is covered with dirt.
  - 3. The landscaping has not been completed and a portion of the landscaping that has been installed has not been properly maintained.
  - 4. Provide the revised landscape sheet to Development Services.
  - 5. The bike rack has not been installed.
  - 6. The fence, six feet in height, has not been erected along the north property line.
  - 7. The storage/construction shed must be removed.
  - 8. The bumper stop at parking space number seven (7) is broken and needs replaced.
  - 9. Provide access to the dumpster (blocked by curbing which needs to be removed) and remove the construction debris from the dumpster enclosure so as to free this area for the storage of trash and garbage.
  - 10. Provide ten (10) parking spaces along the south property line or amend the site plan by removing two (2) seats.

**Richard Carlo was present and sworn for testimony.**

**Mr. Carlo testified that all of the items listed above were in compliance but #1. He requested an extension due to the paving companies being overwhelmed from hurricane repairs.**

**Michael Slayton made a motion to continue the case until the February, 2005 meeting; seconded by Carol Kerrigan. Motion passed on roll call vote 4-2 with John Shelby and Jay Crocker as the dissenting votes.**

**NEW BUSINESS:**

**CASE NO:** C2004-1035      Advanced Mobile Systems  
Sebastian Paris  
426 S. Myrtle Avenue  
New Smyrna Beach, FL 32168

Violation Location: 502 N. Dixie Freeway

- A. Permitting or causing to be permitted prohibited signs (banner signs) upon the subject property in violation of §604.14 G (1) 7. of the Land Development Regulations.
- B. Permitting or causing to be permitted more than the maximum allowable number of signs upon the subject property in violation of §604.14 G (1) c. of the Land Development Regulations.

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

**Ms. Bobelak testified due to no response from Advanced Mobile Systems the Board could not hear the case.**

**Jay Crocker made a motion to continue the case until the February, 2005 meeting; seconded by Michael Slayton. Motion passed on roll call vote 6-0.**

**CASE NO:** C2004-1081      Ed and Donna Ruby  
Motts Indian River Lodge, Inc.  
PO Box 817  
New Smyrna Beach, FL 32168

Violation Location: 1210 S. Riverside Drive

- A. Permitting or causing to be permitted a vacant structure and premises to exist that has not been maintain in a clean, safe, secure, and sanitary condition in violation of §301.3 of the International Property Maintenance Code, 1998 Edition.
- B. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §302.4 of the International Property Maintenance Code, 1998 Edition.

**Ed Ruby was present and sworn for testimony.**

**Mr. Ruby testified that the property has been fenced and is to be demolished but the demolition contractor is trying to save beachfront properties from going into the ocean. Mr. Ruby further testified that the fence has been torn down twice, it's been cut once, we've had break-ins. We are still trying to move things from the inside and that demolition in its loosest sense is being done. We have a six-month permit, so at this point I do not understand why I am here, my time is being wasted, and I am trying to save property on the beachside myself.**

**Ms. Kunkle had Mr. Ruby look at pictures to verify their authenticity and submitted the pictures to the Board as evidence and explained to the Board that the City's concern is the storm debris such as downed trees, tree limbs, the yard needs mowed and that the City is having to maintain the right-of-way because Mr. Ruby will not mow it.**

**Member Michael Slayton asked Attorney Frank Gummy if Mr. Ruby is exempt from maintenance since he has the demolition permit and Mr. Gummy responded that he did not think so and that he thought Mr. Ruby has an on going obligation to maintain the property to City standards.**

**Conversation ensued between Mr. Ruby and the Board regarding his property and other demolition sites within the City.**

**Chairperson Hawk asked Ms. Kunkle what it would take to bring the property into compliance.**

**Ms. Kunkle explained to the Board that the grass needs to be mowed, the gazebo needs to be removed, the tree limbs removed and the downed trees removed.**

**Jay Crocker made a motion to find the property in violation and give Mr. Ruby until February 14, 2005 to bring the property into compliance or face a fine of \$100.00 per day. Seconded by Michael Slayton. Motion passed on roll call vote 4-2 with Carol Kerrigan and Elliott Hoffman casting the dissenting votes.**

**CASE NO: C2004-1142**

**Newport Sound Partners, LTD.  
1551 Sandspur Rd.  
Maitland, FL 32751**

**Location of Violation: Newport Sound on 7<sup>th</sup> Street**

- A. Permitting or causing to be permitted discarded and abandoned waste material (concrete bags) upon the right-of-way in violation of §38-113. of the City Code of Ordinances.

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

**Lynne Kunkle reported to the Board that the subject property was in compliance.**

**CASE NO:** C20041190

Williams Tree Service, LLC  
Arthur Williams  
473 Spruce Street  
New Smyrna Beach, FL 32168

Violation Location: 2506 Fairmont Avenue

- A. Permitting or causing to be permitted the removal of five (5) trees without the required tree removal permit in violation of §604.051 A. of the Land Development Regulations.

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

**Ms. Bobelak testified that she had spoken with the property owner verifying that the trees had been removed without a permit or an inspection and that Williams Tree Service is the company that removed the trees from the property.**

**There was conversation between the Board and Ms. Kunkle as to whether or not this is a repeat offense and that this is the first time this company has been before the Board.**

**Ms. Bobelak submitted pictures of the trees that had been removed without permits.**

**Ms. Bobelak testified that the trees removed were all oak trees and that the property owner intends to replace the trees. Conversation continued between Ms. Bobelak and the Board regarding tree removal that was allowed due to storm damage and the permitting process.**

**Ms. Kunkle recommended the Board find Mr. Williams in violation and fine Mr. Williams \$500.00 per day in the event of a repeat offense.**

**Michael Slayton made a motion to find this case in violation and in the event of a repeat offense, Mr. Williams would face a \$500.00 per day fine. Seconded by John Shelby. Motion carried unanimously 6-0.**

**DISCUSSION:**

Mr. Gummy recommended the Board look at their bylaws and consider using procedure available to the Board. It has been adopted for their deliberation.

**ADJOURNMENT:**

**John Shelby made a motion to adjourn the meeting at 6:03 pm; seconded by Michael Slayton.**

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:

Amy Thomas,  
Administrative Specialist  
% City Hall  
210 Sams Avenue  
New Smyrna Beach, FL 32168-9985  
Telephone: 386.424.2265  
Fax: 386.424.2143