

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
March 15th, 2005
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA

The Hearing of March 15th, 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
Susan Ellis
Carol Kerrigan (Absent)

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

APPROVAL OF MINUTES

February 15th, 2005

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

ELECTION OF OFFICERS

Chairperson

John Shelby made a motion to nominate Maggie Hawk for Chairperson. Seconded by Susan Ellis. Motion carried unanimously on roll-call vote 6-0.

Vice Chairperson

Maggie Hawk made a motion to nominate John Shelby for Vice Chairperson. Seconded by Susan Ellis. Motion carried unanimously on roll-call vote 6-0.

Carol Kerrigan joined the board at 4:45 pm.

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

OLD BUSINESS:

CASE NO: CE2003044C Mark Pernell
North Causeway Marine Corp.
4 N. Causeway
New Smyrna Beach, FL 32169

Violation Location: 4 N. Causeway

Building Code Violations (Land Development Regulations – Ordinance 1-91):

1. Permitting or causing to be permitted the construction of docks, additional boat (dry) storage, fish-cleaning station, a roof on the fish-cleaning station, and a marine fuel dispensing facility without the required state, federal, and local permits in violation of the following:

§304.00 A. - Permitting or causing to be permitted construction without the required building permit.

§803.04 F. - Permitting or causing to be permitted the construction of docks without securing all state and federal permits prior to construction.

Fire Code Violations (NFPA 303, 2000 Edition):

2. Permitting or causing to be permitted the operation of a marina and boatyard without providing the fire department access to the dock and fueling areas by means of an open fire lane, in violation of the following:

§2.2.3 - Permitting or causing to be permitted the operation of a gated facility without providing an appropriate means of access (including keys, cardkeys, and combinations) to the fire department or secured in a lock box on the premises.

§5.1.2 - Permitting or causing to be permitted the operation of a marina and boatyard without providing ready access to all piers, floats, and wharfs for fire-fighting equipment.

3. Permitting or causing to be permitted the operation of a marina and boatyard without providing fire protection for the dock and fueling areas by means of a standpipe and extinguishers in violation of the following:

§4.2.2.1 - Permitting or causing to be permitted the operation of a marina and boatyard without the required fire extinguishers.

§4.2.3 - Permitting or causing to be permitted a fuel-dispensing area without the required fire extinguishers (for extra (high) hazard type) installed on two (2) sides of the fuel-dispensing area.

§4.3.4 - Permitting or causing to be permitted the operation of a marina and boatyard without providing an approved water supply within 100 feet of the pier / land intersection or fire department connection serving fire protection systems.

§4.4.1 - Permitting or causing to be permitted the operation of a marina and boatyard without the required standpipe system.

§5.2.1.8 - Permitting or causing to be permitted the outdoor storage of boats without providing access to the boats from the fire apparatus by a hose-lay distance not exceeding 150 feet.

§5.2.3.3 - Permitting or causing to be permitted the storage of boats on multilevel racks in a building without an approved automatic extinguishing system

4. Permitting or causing to be permitted the operation of a marina and boatyard without posting the safety requirements and instructions for dock and fueling areas in violation of the following:

§2.1 - Permitting or causing to be permitted the operation of a marina and boatyard without having posted "NO SMOKING SIGNS" in all areas where fuels and other flammable liquids are stored or dispensed.

§2.6 - Permitting or causing to be permitted the operation of a marina without the required signs, posters, or posted instructions reminding the public of basic fire safety practices and to warn of unusual or extreme fire hazards.

§6.1.4 - Permitting or causing to be permitted the operation of a marina/boatyard without posting or providing to boat operators a list of safe operating procedures.

5. Permitting or causing to be permitted the operation of a marina and boatyard without having met the requirements for electrical wiring and equipment in violation of the following:

§3.3.1 - Permitting or causing to be permitted the operation of a marina/boatyard without the required benchmark indicating the electrical datum plane of the land area permanently located on shore.

Fire Code Violations (NFPA 30A, 2000 Edition):

6. Permitting or causing to be permitted improper installation of fuel storage and dispensing equipment in violation of the following:

§4.1 – Permitting or causing to be permitted the storage of liquid fuels without having met the provisions of §11.2 of NFPA 30.

§4.3.2 – Permitting or causing to be permitted the installation of aboveground storage tanks without having met the applicable requirements of Chapters 2 and 3 of NFPA 30, *Flammable and Combustible Liquids Code*.

§4.3.2.8 – Permitting or causing to be permitted the installation of aboveground tanks without providing spill control that meets the requirements of §2.3.2.3 of NFPA 30, *Flammable and Combustible Liquids Code*.

§4.3.3.3 – Permitting or causing to be permitted the installation of aboveground storage tanks without completely enclosing each tank with its own vault.

§5.2.2 – Permitting or causing to be permitted the installation of a piping system that has not been protected from physical damage.

§5.2.3 – Permitting or causing to be permitted the installation of a piping system that is in contact with soil and has not been protected from corrosion.

§6.3.1 – Permitting or causing to be permitted the dispensing of Class I and Class II liquids by means other than by fixed pumps designed and

equipped to allow control of the flow and prevent leakage or accidental discharge.

§6.3.2 – Permitting or causing to be permitted the installation of dispensing devices for Class I liquids that are not listed.

§6.3.4 – Permitting or causing to be permitted the installation of dispensing devices that are not mounted on a concrete island or otherwise protected from collision damage.

§6.3.9 – Permitting or causing to be permitted the installation of dispensing devices without the required listed, rigidly anchored emergency shutoff valve.

§6.5.1 – Permitting or causing to be permitted the installation of dispensing devices with hoses in excess of 18 feet that is not secured so as to protect the hoses from damage.

§6.6.5 – Permitting or causing to be permitted the installation of dispensing devices without the automatic-closing type nozzles and without a latch-open device.

7. Permitting or causing to be permitted the operation of a marina and boatyard without the required telephone or other means of contacting the fire department in case of emergency in violation of the following:

§9.5.5. – Permitting or causing to be permitted the operation of a marina and boatyard without the required telephone or other approved, clearly identified means to notify the fire department.

8. Permitting or causing to be permitted the refueling of vessels or marine craft directly from a tank vehicle in violation of the following:

§11.9 – Permitting or causing to be permitted the dispensing of Class II liquids in the open from a tank vehicle to a marine craft other than that which is used in conjunction with the business operation.

Fire Code Violations (Fire Prevention Code, 2000 Edition)

9. Permitting or causing to be permitted the storage of liquids in a tank vehicle.

§28-4.2.1 - Permitting or causing to be permitted the outdoor storage of liquids which is not stored in tanks under ground as governed by 2-4 of NFPA 30, *Flammable and Combustible Liquids Code* or tanks located

above ground with the approval of the authority having jurisdiction and as approved for in §2-4 of NFPA 30A (30A: 10-2.1.1)

At the Hearing on the 19th day of October 2004, the Board entered an Order to continue this case until the 16th day of November 2004.

At the Hearing on the 16th day of November 2004 the Board entered an Order finding Mark Pernell in violation of the City's codes and gave Mark Pernell four (4) months from the date the Building Department issued the permit (11/05/04) to bring the subject property into compliance.

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

Ms. Kunkle testified that Mr. Pernell is in compliance, with the exception of the standpipe and that Mr. Pernell wants to permit this at the same time he permits the gazebo. Ms. Kunkle also informed the board that Mr. Pernell brought the property into compliance within the time specified by the Board.

Michael Slayton made a motion to find the case in compliance; seconded by Jay Crocker. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2004-0354 Tiro Beachwear, Inc.
701 3rd 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 in violation of §604.05 A. (3) of the Land Development Regulations.

At the Hearing on the 18th day of May 2004 the Board entered an Order continuing this case until the 20th day of July 2004.

At the Hearing on the 20th day of July 2004 the Board entered an Order continuing this case until the 21st day of September 2004.

Due to Hurricane Ivan the September 21st, 2004 Hearing was cancelled.

At the Hearing on the 19th day of October 2004 the Board entered an Order continuing this case until the 18th day of January 2005.

At the Hearing on the 18th day of January 2005 the Board entered an Order continuing this case until the 15th day of February 2005.

At the Hearing on the 15th day of February 2005 the Board entered an Order continuing this case until the 15th day of March 2005.

Michael Sharabani was present and sworn for testimony.

Mr. Sharabani stated that there had been several problems with architects, he still does not have plans for the structure and where trees would be appropriate. He believed that he could pay \$2,000 into a fund and then withdraw that \$2,000 when he is ready to plant the trees.

Ms. Kunkle informed the Board that last month continuation was requested to give Mr. Sharabani enough time to decide whether he wanted to pay into the City's tree fund or plant the required replacement trees. Ms. Kunkle also reminded the board that they had been very kind to Mr. Sharabani in working with him by allowing multiple continuances for one reason or another and that now there seemed to be a misunderstanding regarding Mr. Sharabani's options. Further Ms. Kunkle testified that the City does not provide escrow accounts that the public can draw from but that the City has a tree fund that Mr. Sharabani can pay the replacement costs to and the City will provide trees in needed areas such as the new fire station or the golf course.

Ms. Kerrigan asked if it was still a possibility to have an escrow with a separate attorney?

Ms. Kunkle testified that Mr. Sharabani previously had that option and it had been discussed with Attorney Mark Hall, but that Mr. Hall no longer represents Mr. Sharabani, but that it was still an option if Mr. Sharabani wanted to retain Mr. Hall or another attorney.

Mr. Crocker asked if once the \$2,000 was paid would he still have to plant trees on the property.

Ms. Kunkle informed the board that Mr. Sharabani would be required to meet the landscape requirements for new development which would be addressed in his site plan.

Ms. Kerrigan stated that the case had been open and before the board since May 2004.

Ms. Hawk stated that Mr. Sharabani had two choices in order to make his case come into compliance. He could either pay the \$2,000 or plant the 14 trees.

Mr. Crocker reiterated the choices and benefits of each option open to Mr. Sharabani.

Photographs were reintroduced for the Board's review.

Jay Crocker made a motion to find this case in violation and give Mr. Sharabani 10 days to bring the subject property into compliance or incur a fine of \$100 per day; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2005-0059 Vanguard Property Mgmt., Inc.
300 River Bluff Dr.
Ormond Beach, FL 32174

Violation Location: 536 Mary Avenue

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38.112. of the City Code of Ordinances.

At the Hearing on the 15th day of February 2005 the Board entered an Order finding the subject property in violation and gave Vanguard Property Management, Inc. ten (10) days to bring the property into compliance or face a fine of \$100.00 per day for each and every day the subject property remains in violation.

Vanguard Property Management, Inc failed to comply with the Board's Order. A fine of \$100.00 per day started on the 26th day of February 2005 and totals \$1800.00 (18 days).

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

Ms. Kunkle informed the Board that the owner failed to comply with the Board's Order by the initial date the fines began, but is now in compliance.

Jay Crocker made a motion to find the subject property in compliance and reduce the fine to zero; seconded by Michael Slayton. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2005-0060 Mabel Russ
601 N. Volusia Street
St. Augustine, FL 32095

Violation Location: 538 Mary Avenue

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-112. of the City Code of Ordinances.

At the Hearing on the 15th day of February 2005 the Board entered an Order finding the subject property in violation and gave Mabel Russ ten (10) days to bring the property into compliance or face a fine of \$100.00 per day for each and every day the subject property remains in violation.

Mabel Russ failed to comply with the Board's Order. A fine of \$100.00 per day started on the 26th day of February 2005 and totals \$1800.00 (18 days).

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

Ms. Kunkle informed the Board that the owner failed to comply with the Board's Order by the initial date the fines began, but is now in compliance.

Jay Crocker made a motion to find the subject property in compliance and reduce the fine to zero; seconded by Michael Slayton. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2005-0061

Marian Clark
1920 Parrish Street
Philadelphia, PA 19130-2021

Violation Location: 474 Palm Street

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-112. of the City Code of Ordinances.

At the Hearing on the 15th day of February 2005 the Board entered an Order finding the subject property in violation and gave Marian Clark ten (10) days to bring the property into compliance or face a fine of \$100.00 per day for each and every day the subject property remains in violation.

Marian Clark failed to comply with the Board's Order. A fine of \$100.00 per day started on the 26th day of February 2005 and totals \$1800.00 (18 days).

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

Ms. Kunkle informed the Board that the property is in compliance.

Jay Crocker made a motion finding the property in compliance; seconded by Maggie Hawk. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2005-0063

Raymond Davis
317 Sheldon Street
New Smyrna Beach, FL 32168-6654

Violation Location: 449 Palm Street

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-112. of the City Code of Ordinances.

At the Hearing on the 15th day of February 2005 the Board entered an Order finding the subject property in violation and gave Raymond Davis ten (10) days to bring the property into compliance or face a fine of \$100.00 per day for each and every day the subject property remains in violation.

Raymond Davis failed to comply with the Board's Order. A fine of \$100.00 per day started on the 26th day of February 2005 and totals \$1800.00 (18 days).

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

Ms. Kunkle informed the Board that the owner failed to comply with the Board's Order and that the lot remains in violation by having weeds and undergrowth present.

John Shelby made a motion to impose a fine and authorize the city attorney to record a lien; seconded by Susan Ellis. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2005-0064

Freddie Hay
520 Mary Avenue
New Smyrna Beach, FL 32168-6651

Violation Location: 435 Palm Street

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-112. of the City Code of Ordinances.

At the Hearing on the 15th day of February 2005 the Board entered an Order finding the subject property in violation and gave Freddie Hay ten (10) days to bring the property into compliance or face a fine of \$100.00 per day for each and every day the subject property remains in violation.

Freddie Hay failed to comply with the Board's Order. A fine of \$100.00 per day started on the 26th day of February 2005 and totals \$1800.00 (18 days).

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

Ms. Kunkle informed the Board that the owner failed to comply with the Board's Order and that the lot remains in violation by having weeds and undergrowth present.

Carol Kerrigan made a motion to impose the fine and authorize the city attorney to record a lien; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

NEW BUSINESS:

CASE NO: C2005-0055

Tessie Richardson
P. O. Box 596
Alachua, FL 32615-0596

Violation Location: 534 Mary Avenue

- A. Permitting or causing to be permitted sanitary facilities to exist that have not been properly maintained in good sanitary working conditions free from defects, leaks and obstructions in violation of §302.1 of the Standard Housing Code 1997 Edition.
- B. Permitting or causing to be permitted water heating facilities that has not been properly maintained in a safe and good working condition in violation of §302.4 of the Standard Housing Code 1997 Edition.
- C. Permitting or causing to be permitted a gas heater that has not been properly maintained in a safe and good working condition in violation of §302.5.1 of the Standard Housing Code 1997 Edition.

- D. Permitting or causing to be permitted kitchen facilities to exist without proper cooking facilities and refrigeration in violation of §302.6 of the Standard Housing Code 1997 Edition.
- E. Permitting or causing to be permitted electrical outlets and fixtures to exist that have not been properly maintained in safe and good working condition and connected to a source of electric power in violation of §304 of the Standard Housing Code 1997 Edition.
- F. Permitting or causing to be permitted roof system to exist that is not structurally sound and maintained in a safe manner without defects, which admits rain and causes dampness in the walls and interior portion of the building in violation of §305.3.1 of the Standard Housing Code 1997 Edition.
- G. Permitting or causing to be permitted stairs and porches to exist that has not been maintained in a sound condition and good repair in violation of §305.5 of the Standard Housing Code 1997 Edition.
- H. Permitting or causing to be permitted windows to exist that are not substantially weathertight and rodent proof, and maintained in sound working condition and good repair in violation of §305.7 of the Standard Housing Code 1997 Edition.
- I. Permitting or causing to be permitted windows to exist that cannot be easily opened and secured in position by window hardware in violation of §305.10 of the Standard Housing Code 1997 Edition.
- J. Permitting or causing to be permitted floors, interior walls and ceilings that have not been maintained in sound condition and good repair and are incapable of supporting the load which normal use may cause to be placed thereon in violation of §305.16.1 of the Standard Housing Code 1997 Edition.
- K. Permitting or causing to be permitted bathroom and kitchen floor surface that has not been maintained so as to be substantially impervious to water and so as to permit such floors to be easily kept in a clean and sanitary condition in violation of §305.16.2 of the Standard Housing Code 1997 Edition.

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

The Board was informed that the Return Receipt for the Notice of Hearing had not been received, therefore the Board did not have jurisdiction.

Jay Crocker made a motion to continue the case to April 19, 2005 and re-notice the owner; seconded by Michael Slayton. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2005-0085

Joy Luck
1918 State Road 44
New Smyrna Beach, FL 32168

Violation Location: 1918 State Road 44

- A. Permitting or causing to be permitted the installation of signs without the required permit in violation of §604.14 D. of the Land Development Regulations.

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

Ms. Bobelak submitted pictures of the sign for the Board to review.

Ms. Bobelak testified that she had spoken with the contact for Joy Luck, and was requesting a continuance. Further Ms. Bobelak testified that she is not aware of which sign company performed the work.

Michael Slayton made a motion to continue this case until next month in order to charge the sign company; seconded by Jay Crocker. Motion passed by a vote of 6-1. John Shelby was the dissenting vote.

CASE NO: C2005-0108

Paul Holub, Jr.
Holub Development
P. O. Box 730086
Ormond Beach, FL 32173-0086

Violation Location: Southeast Quadrant at
State Road 44 & I-95

- A. Permitting or causing to be permitted the installation of signs without the required permit in violation of §604.14 D. of the Land Development Regulations.

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

Ms. Bobelak informed the Board this case is in compliance.

DISCUSSION:

None

ADJOURNMENT:

There being no further business Michael Slayton made a motion to adjourn the Hearing; seconded by John Shelby. Motion carried on roll-call vote 7-0. The board adjourned at 5:22 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:

Lynne Kunkle
Code Enforcement Supervisor
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2265
Fax: 386.424.2143