

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
May 17th, 2005
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA

The Hearing of May 17th, 2005 was called to order at 4:31 p.m. Answering to roll call:

- Maggie Hawk (Chairperson)
- John Shelby (Vice Chairperson)
- Michael E. Slayton
- Jay Crocker
- Elliott Hoffman
- Susan Ellis
- Carol Kerrigan

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

APPROVAL OF MINUTES

April 19th, 2005

Jay Crocker made a motion to approve the minutes; seconded by Susan Ellis. Motion passed unanimously on roll call vote 7-0.

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

OLD 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.
- B. Permitting or causing to be permitted water-heating facilities that have not been properly maintained in a safe and good working condition.
- C. Permitting or causing to be permitted a gas heater that has not been properly maintained in a safe and good working condition.
- D. Permitting or causing to be permitted kitchen facilities to exist without proper cooking facilities and refrigeration.
- 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.
- 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.
- G. Permitting or causing to be permitted stairs and porches to exist that has not been maintained in a sound condition and good repair.
- H. Permitting or causing to be permitted windows to exist that are not substantially weather-tight and rodent proof, and maintained in sound working condition and good repair.
- I. Permitting or causing to be permitted windows to exist that cannot be easily opened and secured in position by window hardware.
- 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.
- 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.

At the Hearing on the 15th day of March 2005 the Board entered an Order to continue this case until the 19th day of April 2005.

At the Hearing on the 19th day of April 2005 the Board entered an Order finding the property in violation and gave Tessie Richardson twenty (20) days to bring the property into compliance or face a fine of \$100.00 per day for each and every day the property remains in violation.

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

Ms. Bobelak stated the 20 days had expired as of May 9th, 2005. Ms. Bobelak stated as of May 10th, 2005 there were no permits for this location and no one has been in contact with the City staff.

Mr. Crocker asked staff if the respondent had received notification of the hearing today.

Ms. Bobelak stated notification of the hearing today was sent certified mail on May 5th, 2005; however, she had not received the return receipt. She further stated all previous return receipts have been signed and returned.

Ms. Hawk asked who was signing for the certified documents.

Ms. Bobelak stated it was difficult to read the signatures on the previous cards.

Mr. Crocker asked why this case was continued from the March meeting to the April meeting.

Ms. Kunkle verified the continuance was due to a notification issue.

Attorney Gummey stated the fine appears to have been levied at the last meeting and stated if it is the Boards procedure to notify prior to ordering the lien being imposed, then he believes there would not be notice in this case.

Mr. Crocker asked Attorney Gummey if the Board's past practice of noticing people for imposing fines and recording liens made it binding on the Board should the Board, in this instance, neglect to possess the return receipt? He also asked Attorney Gummey if Ms. Richardson's notice or presence would change her defense legally?

Mr. Gummey stated it should not make a difference in the case.

Mr. Crocker made a motion to impose the fine and authorize the City Attorney to record a lien; seconded by John Shelby. Motion passed on a roll call vote unanimously 7-0.

NEW BUSINESS:

CASE NO.: C2005-0206

Yongae Kim Thorp, Trustee
1402 N. Atlantic Avenue
New Smyrna Beach, FL 32169

Violation Location: 403 S. Orange Avenue

- A. Permitting or causing to be permitted major recreational equipment to be stored upon the subject property in violation of §802.04 of the Land Development Regulations.
- B. Permitting or causing to be permitted recreational equipment to be used for living, sleeping or housekeeping purpose while being stored upon the subject property in violation of §802.06 of the Land Development Regulations.

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

Ms. Bobelak stated this is a rental property and submitted to the Board photos of the recreational equipment located on the property. Ms. Bobelak stated she has faxed the information to the property manager, Deanne Parker per her request. Ms. Bobelak stated Ms. Parker had indicated to her that she was aware of the violation and would speak with the tenant to have the recreational equipment removed from the property. Ms. Bobelak stated she visited the location on May 17th, 2005 and it appears Item B is in compliance; however, there are still three pieces of recreational equipment, two boats and one motor home, on the property. Ms. Bobelak stated the City Regulations will allow up to two 35' in length, in the rear yard or one in the front or side yard. Ms. Bobelak stated the City has been dealing with this case since the end of March 2005. The motor home and a boat are located in the side yard and another boat is located in front yard.

Mr. Slayton made a motion to find this case in violation and give the owner 10 days to come into compliance or face fine of \$50 (fifty dollars) per day for each and every day the property remains in violation; seconded by John Shelby. Motion passed on roll call vote unanimously 7-0.

REPEAT BUSINESS:

CASE NO.: C2005-0335

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.

At the Hearing on the 17th day of November 2004, the Board entered an Order continuing this case until the 18th day of January 2005.

At the Hearing on the 1st day of December 2004, the Board entered an Order to continue this case until the 18th day of January 2005 with the stipulation that there would be no bike activity on the subject property and Michael J. Reed agreed to this.

At the Hearing on the 18th day of January 2005, the Board entered an Order finding the subject property in violation of items B & C and giving Michael J. Reed two (2) weeks to remove all ramps and the dirt bike track or face a fine of one hundred dollars (\$100.00) per day for each and every day the subject property remains in violation.

At the Hearing on the 15th day of February 2005, the Board entered an Order finding the subject property in compliance with the Boards Order.

Michael James Reed was present and sworn for testimony.

Ms. Hawk asked Mr. Reed if he understood the charges against him in which he stated he did not understand. Ms. Hawk asked if he had received a copy of the three violation items for this hearing.

Mr. Reed stated he had received information regarding business that had been settled a few months ago. Mr. Reed stated his yard is exactly the same as it was when the Board found him in compliance. Mr. Reed stated he rode his motorcycle in his side yard one time for about one half hour after repairs for testing purposes. He further stated he has not built any new ramps or jumps or allowed anyone else to ride motorcycles in his yard.

Ms. Bobalak stated on the 6th of May, 2005 she witnessed dirt bike riding in the side yard with a piece of plywood up against the dirt piles in the yard and the bike was going over the dirt ramp. Ms. Bobalak stated on the 13th of May, 2005 she returned for another inspection and the plywood had been removed from the dirt pile.

Mr. Reed stated he did not have a ramp built in his yard just a piece of plywood against a flower garden for only one hour for one day.

Ms. Kerrigan explained that constituted a ramp.

Ms. Bobalak further stated that the ramp was there from the 6th of May 2005 to at least the 12th of May 2005.

Mr. Reed confirmed that he rode his motorcycle in his side yard up on the plank over the dirt pile in his yard; however, he stated he did not have a track or jumps set up.

Carol Kerrigan made a motion to fine Mr. Reed \$500 per day for the six days the City found him in violation; seconded by Jay Crocker.

Mr. Gummey stated that Item A was not a repeat violation.

Ms. Kerrigan amended the motion to include only Items B and C in violation; seconded by Mr. Crocker.

Elliott Hoffman made a motion to amend the proposed motion by reducing the fine to \$150 per day for the six days the City found Mr. Reed in violation. Motion failed for lack of a second.

The original motion stands for vote. Motion passed on roll call vote 4-3 with members Susan Ellis, Elliott Hoffman and Michael Slayton as the dissenting votes.

Ms. Hawk explained to Mr. Reed the majority of the vote was in favor of the motion charging him a fine of \$500 per day for the six days the City found him in violation.

DISCUSSION:

None

ADJOURNMENT:

There being no further business Ms. Hawk stated the meeting was adjourned. All agreed and the board adjourned at 4:55 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: 386.424.2265
Fax: 386.424.2143