

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
July 19th, 2005
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA

The Hearing of July 19th, 2005 was called to order at 4:36 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, Frank Gummey, City Attorney and Tammy Dickerson, Administrative Specialist.

APPROVAL OF MINUTES

May 17th, 2005

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

OLD BUSINESS:

CASE NO: CE2003019P

Jennie Lee Tobias &
Johnnie Lee Logan
424 Palm Street
New Smyrna Beach, FL 32168

Violation Location: 424 Palm Street

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property in violation of §38-111 of the City Code of Ordinances.

At the Hearing on the 18th day of May 2004 the Board entered an Order finding the subject property in violation and to reduce the lien to \$500.00 provided there was a closing on the property and the new purchaser cleans the property within fourteen (14) days; however, in the event the property is not sold to this purchaser the lien amount will revert back to its original amount and the fine will continue to accrue at \$100.00 per day.

Robyn Jones was present and she and Regina Lynne Kunkle, Code Enforcement Supervisor was sworn for testimony.

Robyn Jones testified that she is the current owner of the property and that the property has been cleaned.

Board Members questioned Ms. Kunkle as to why this case was before the Board. Ms. Kunkle testified that the City's original intent was to ask the Board to authorize the City Attorney to foreclose because a previous Order recognized the new ownership and reduced the lien to \$500.00 if the property was brought into compliance within 14 days of the date of that Order. Further Ms. Kunkle testified that it was only today that she found the lot had been mowed and that Ms. Jones was requesting a reduction to zero dollars (\$0.00).

Ms. Jones also testified that she had purchased the lot and then had to pay all of the back taxes.

Member Carol Kerrigan made a motion to recommend to the City Commission that the lien be reduced to zero dollars (\$0.00); seconded by Member Michael Slayton. Motion passed unanimously on roll call vote 7-0.

CASE NO: CE2004-0185D

Tony D & Theresa Kelly
1900 E. Gateway Drive
New Smyrna Beach, FL 32168

Violation Location: 609 Dora Street

- A. Permitting or causing to be permitted a structure to exist that has not been maintained in a safe and sanitary condition in violation of §101.6 of the Standard Housing Code, 1997 Edition.

At the Hearing on the 20th day of April 2004 the Board entered an Order finding Tony D. & Theresa Kelly in violation and continued 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 to the 19th day of October 2004.

At the Hearing on the 19th day of October 2004 the Board took no action at that time.

At the Hearing on the 19th day of April 2005 the Board entered an Order continuing this case to the 19th day of July 2005.

Tony Kelly and Theresa Kelly were present and sworn for testimony.

Mr. Kelly testified that the plans had been completed and that he was working on his application package so he could submit it to the building department for review.

Ms. Kunkle supported Mr. Kelly's testimony by adding that she had spoken to the architect the day before who let her know the sealed plans had just recently been completed and the Kelly's would be pulling the building permit as an owner/builder, therefore they would be putting the application package for the permit together just as a contractor would be doing at this point.

Ms. Kunkle asked that the Board consider continuing the case until at least September or October 2005.

Member Jay Crocker made a motion to continue this case until the October 2005 Hearing; seconded by Vice Chairperson John Shelby. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2004-0378 Jewel G. Freeman & Fearn M. Parker
P.O. Box 310728
Jamaica, NY 11431-0728

Violation Location: 405 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 17th day of November 2004 the Board entered an Order finding the subject property in violation and to impose the fine of \$30.00 per day for each day the subject property is in violation and authorize the City Attorney to record the lien.

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

Ms. Kunkle testified Staff met all the notice requirements through certified mail and posting of the property.

Ms. Kunkle submitted a picture of the vacant lot for the Board's review and testified that the lot remains in violation and that the City is requesting the Board authorize the City Attorney to foreclose.

Member Michael Slayton made the motion to authorize the City Attorney to foreclose; seconded by Vice Chairperson John Shelby. 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).

At the Hearing on the 15th day of March 2005 the Board entered an Order finding the subject property in violation and to impose a fine and authorize the City Attorney to record a lien.

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

Ms. Kunkle testified that all notice requirements were met through certified mail and posting of the property.

Ms. Kunkle submitted a picture of the vacant lot for the Board's review and testified that the lot remains in violation and that the City is requesting the Board authorize the City Attorney to foreclose.

Member Michael Slayton made the motion to authorize the City Attorney to foreclose; seconded by Vice Chairperson John Shelby. 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).

At the Hearing on the 15th day of March 2005 the Board entered an Order finding the subject property in violation and to impose a fine and authorize the City Attorney to record a lien.

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

Ms. Kunkle testified that all notice requirements were met through certified mail and posting of the property.

Ms. Kunkle submitted a picture of the vacant lot for the Board's review and testified that the lot remains in violation and that the City is requesting the Board authorize the City Attorney to foreclose.

Member Vice Chairperson John Shelby made the motion to authorize the City Attorney to foreclose; seconded by Susan Ellis. 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.

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 to continue this case until the 19th day of July 2005.

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

Ms. Kunkle informed the Board that the permit for the sign had been picked up earlier that day bringing this case into compliance.

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

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.

At the Hearing on the 17th day of May 2005 the Board entered an Order finding the subject property in violation and gave the owner ten (10) days to come into compliance or face a fine of \$50 (fifty dollars) per day for each and every day the property remains in violation.

A fine of fifty dollars (\$50.00) per day started on the 28th day of May 2005, totaling \$1900.00 (38 days), the subject property was brought into compliance on the 5th day of July 2005.

Yongae Kim Thorp was present and sworn for testimony.

Ms. Thorp explained to the Board that this is a rental unit and that she counted on her property manager to correct the conditions and further explained the chain of events that eventually lead the property in to compliance and asked that the Board reconsider her fine.

Based on Ms. Thorp's testimony, Member Carol Kerrigan made a motion finding the property in compliance and reducing the fine of \$1,900.00 to zero dollars (\$0.00); seconded by Member Jay Crocker. Motion passed unanimously on roll call vote 7-0.

NEW BUSINESS:

CASE NO: C2005-0082

Beverly A. Neff
574 Ronnoc Lane
New Smyrna Beach, FL 32168

Violation Location: 316 N. Orange Street

- A. Permitting or causing to be permitted the occupancy of dwelling units that does not comply with the requirements of the Standard Housing Code, 1997 edition in violation of §310 of the Standard Housing Code, 1997 Edition.
- B. Permitting or causing to be permitted the occupancy of dwelling units without the required sanitary facilities (kitchen sink, lavatory, tub or shower, and a water closet) being maintained in good working condition and every plumbing fixture and water and waste pipe maintained in good sanitary working condition free from defects and leaks in violation of §302.1 of the Standard Housing Code, 1997 Edition.
- C. Permitting or causing to be permitted the occupancy of dwelling units without the required heating facilities in violation of §302.5.1 of the Standard Housing Code, 1997 Edition.
- D. Permitting or causing to be permitted the occupancy of dwelling units without the required number of electric lights and outlets in violation of §303.4 of the Standard Housing Code, 1997 Edition.
- E. Permitting or causing to be permitted the occupancy of dwelling units without every electrical outlet and fixture, and all electrical wiring and equipment connected to a source of electric power in accordance with the electric code in violation of §304 of the Standard Housing Code, 1997 Edition.

- F. Permitting or causing to be permitted the occupancy of dwelling units in which the exterior walls have holes, breaks, loose or rotting boards which admits rain or dampness to the interior portion of the walls and occupied spaces of the building in violation of §305.2 of the Standard Housing Code, 1997 Edition.
- G. Permitting or causing to be permitted the occupancy of dwelling units in which the roof has defects that admits rain or causes dampness in the walls or interior portion of the building in violation of §305.3.1 of the Standard Housing Code, 1997 Edition.
- H. Permitting or causing to be permitted the occupancy of dwelling units in which the stairs and porches are so deteriorated that they are no longer safe to use and capable of supporting the load that normal use may be caused to be placed thereon in violation of §305.5 of the Standard Housing Code, 1997 Edition.
- I. Permitting or causing to be permitted the occupancy of dwelling units without the windows being substantially weather tight, watertight and rodent proof and in sound working condition and good repair in violation of §305.7 of the Standard Housing Code, 1997 Edition.
- J. Permitting or causing to be permitted the occupancy of dwelling units without the windows, required for light and ventilation, capable of being easily opened and secured in position by window hardware in violation of §305.10 of the Standard Housing Code, 1997 Edition.
- K. Permitting or causing to be permitted the occupancy of dwelling units which do not have central air conditioning systems or screens, stretched and fitted and maintained without open rips or tears, on all exterior openable windows and doors used or required for ventilation in violation of §305.13.1 of the Standard Housing Code, 1997 Edition.
- L. Permitting or causing to be permitted a building containing occupied dwelling units with exterior wood surfaces that are not protected from the elements and decay by paint or the use of another protective covering or treatment and siding that has deteriorated to such a state that the exterior walls are no longer weather resistant and water tight in violation of §305.14 of the Standard Housing Code, 1997 Edition.
- M. Permitting or causing to be permitted the occupancy of dwelling units with floors, interior walls and ceilings so deteriorated they no longer are substantially rodent proof and in sound condition and good repair or capable 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.
- N. Permitting or causing to be permitted the occupancy of dwelling units without every toilet, bathroom and kitchen floor surface being maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition in violation of §305.16.2 of the Standard Housing Code, 1997 Edition.

Beverly A. Neff was present.

Ms. Kunkle informed the Board that because Ms. Neff had filed an appeal she was withdrawing the case until the August 2005 Hearing.

CASE NO: C2005-0213

Rick W. & Joy W. Cogle Co-Trsts
1832 Wiley Post Road
Daytona Beach, FL 32124-6756

Violation Location: Vacant Lots on Robert Street
7419-07-02-0050
7419-07-02-0010

- 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.
- B. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property in violation of §38-113 of the City Code of Ordinances.

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

Ms. Kunkle informed the Board that this case is in compliance.

CASE NO: C2005-0341

Barbara A. Ferrin
801 Faulkner Street
New Smyrna Beach, FL 32168

Violation Location: 801 Faulkner Street

- A. Permitting or causing to be permitted an interior demolition without the required permits in violation of §26-171 of the City Code of Ordinances.

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

Ms. Kunkle informed the Board that she was withdrawing this case.

REQUEST FOR FINE REDUCTION:

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 in violation of MU Zoning District of the Land Development Regulations, Ordinance 1-91.
- B. Permitting or causing to be permitted the construction of ramps and the creation of a dirt bike track upon the subject property in violation of MU Zoning District of the Land Development Regulations, Ordinance 1-91.
- C. Permitting or causing to be permitted ramps in the required side yard in violation of MU Zoning District of the Land Development Regulations, Ordinance 1-91.

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.

At the Hearing on the 17th day of May 2005, the Board entered an Order finding the subject property in violation of Items B & C and imposing a fine of \$500 per day for the six days Mr. Reed was found in violation.

Mr. Reed's Attorney, Mark Hall is requesting to appear before the Board proposing Mr. Reed be brought into compliance by payment of the required undetermined administrative costs, plus a reasonable fine.

Attorney Mark Hall was present and representing this case.

Mr. Hall explained to the Board that he was seeking a fine reduction on behalf of his client and that he felt it would be fair to charge his client for \$500.00 for the one day he was caught riding his bike on the ramp and that his client would also be willing to pay the administrative fee of \$100.00 which totals \$600.00.

Board Members discussed whether or not Mr. Reed fully understood that he had violated a City Ordinance and that any reduction in the fine would be contingent upon leveling out the dirt mounds/ramps.

Mr. Reed was also present and sworn for testimony.

Mr. Reed testified that he fully understood he violated the City's Ordinance and was sorry for having done so. Mr. Reed further testified that all of the dirt mounds have already been leveled and that he would no longer be living at this location at the end of 30 days.

Member Michael Slayton made a motion to reduce the fine of \$3,000.00 to \$500.00 and to charge Mr. Reed \$100.00 in costs; seconded by Susan Ellis. Motion passed on roll call vote 4-3 with Members John Shelby, Jay Crocker, and Elliot Hoffman casting the dissenting votes.

DISCUSSION:

Member Jay Crocker asked that the history portion of each case on the agenda include a statement of how the Board arrived at their decision.

Ms. Kunkle spoke with the Board aboard regarding the August Hearing having been changed to Wednesday, August 17, 2005 and starting with that date all Code Board Hearings will take place in the DeBerry Room at the Utilities Commission.

ADJOURNMENT:

There being no further business Jay Crocker made a motion to adjourn the Hearing; seconded by Susan Ellis. All agreed and the board adjourned at 5:32 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