

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING HELD AT 4:30 P.M.  
August 17<sup>th</sup>, 2005  
UTILITIES COMMISSION, 3<sup>RD</sup> DEBERRY ROOM, 200 CANAL AVENUE  
NEW SMYRNA BEACH, FLORIDA

The Hearing of August 17<sup>th</sup>, 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**

July 19<sup>th</sup>, 2005

**Jay Crocker made a motion to approve the minutes with amendments to add in the Freeman, Davis and Hay cases that there was service by posting; 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:** C2005-0082

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 and sworn in for testimony.**

**Chairperson Hawk asked Ms. Neff if she was in agreement with the violation. Ms. Neff stated she agreed with half of the violations. Ms. Neff stated she was informed by Barbara Bobelak, Fire Department and Rick McFadden that she was given four options 1) sell the property, 2) repair the property, 3) demolish the property or 4) live in the property alone. Ms. Neff testified that she has spoken with James Coomber to obtain an estimate which he informed Ms. Neff that there is no way to estimate the cost; therefore, she has the property for sale by owner.**

**Mr. Gummey asked Ms. Neff to list the violations she agrees are not in compliance. Ms. Neff agreed she was not in compliance with items: A, B, F, K, L, M, and N.**

**Jay Crocker made a motion finding Ms. Neff in violation of items A, B, F, K, L, M and N listed above; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.**

**Ms. Bobelak presented interior and exterior photographs to the Board that were taken in February 2005. Ms. Bobelak stated she had not returned to the property to confirm compliance or noncompliance. Ms. Bobelak stated this is one multi-unit home with five apartments that are currently occupied. Ms. Bobelak stated**

there is a 30-day appeal process through the Standard Housing Code and Ms. Neff wrote a letter to the Building Trades Board for an appeal; however, Mr. McFadden informed Ms. Neff and Ms. Bobelak that the issues she wanted to appeal could not be appealed.

**Ms. Bobelak testified she witnessed the following:**

- a cook stove with a fan in front of it for use as a heating unit
- holes in the floor
- outlets with exposed wires
- lights not working
- exposed wiring on ceiling fans
- no covers on the florescent lighting
- excessive use of extension cords due to a lack of usable outlets
- water stained ceiling tiles that were bowing from the leaking roof
- an outside wall with large holes that would permit rain to enter the structure
- damage can be seen in the roofline photograph
- there is a makeshift step used to enter one of the apartments made of cinder blocks and pallets
- windows that will not stay open without additional equipment to hold them open
- windows that do not fit snug into the window frame allowing for rain to enter structure and windows with no screens

**Ms. Neff testified to the following:**

- the home had electric running through pipes and was rewired years ago so the pipes are not supposed to work
- the tenants were responsible for the fan not working
- she was aware there was no cover over the florescent lighting
- there are two roof leaks currently and the others have been repaired
- she provides electric heaters for her tenants but when the tenants move they take them
- the tenant was responsible for the makeshift step installed at the apartment and has since been removed
- she did not know the condition of the flooring in the structure because the carpeting covered the flooring
- there are windows in the structure that must use an outside device in order to keep the window open

**Richard McFadden, Chief Building Official was sworn for testimony.**

**Mr. McFadden reviewed the photographs taken by Ms. Bobelak. Mr. McFadden stated that he was inside the structure when the photographs were taken in February 2005 and testified that he witnessed:**

- **holes in the flooring on the second level of the structure**
- **the ceiling fan in the same apartment was hanging by the wires**
- **a portion of the cabinet had been removed and there was termite damage where the cabinet had been**
- **code in multi-family dwellings mandates a step can not be higher than 7” and with the makeshift steps gone there is an excess of 7” and there must be access to this door**
- **each room is required to have one receptacle per room**
- **there were a number of leaks shown by the ceiling tiles with no permit on file for repair in the structure and if repairs were made it was in violation**
- **anything held in a building for sale or for lease requires a permit and a licensed contractor**
- **on the NE corner of the building there is a carrier beam supporting the structure that is in disrepair due to dry rot and termites**
- **windows were in disrepair as the sash cords and the window weights were missing and windows are supposed to operate with the equipment supplied by the manufacturers**

**Mr. Crocker stated Ms. Neff has heard the testimony from City Staff and seen the evidence with regard to the “E” violation electrical wiring being exposed and the outlets not all being connected to electrical power in accordance with the code and asked Ms. Neff if she challenged the evidence the City has presented.**

**Mr. Crocker asked if the steps had been replaced with proper steps to which Ms. Neff replied they had not.**

**Mr. Hoffman asked Ms. Neff what the terms of rental are with her tenants. Ms. Neff stated duration of rental with her tenants varies and none of her tenants have long-term leases. Ms. Neff stated the violations were in existence prior to the rental of the units.**

**Mr. Hoffman asked if a security deposit was placed with each tenant that would help with the expense of some repairs and the replacement of heaters. Ms. Neff testified that some tenants pay a security deposit and some do not; however, the tenants that do pay either receive their deposit back or they live out their deposit by not paying the last months rent.**

Mr. Hoffman asked if homeowners could repair a leak in their own roof. Mr. McFadden stated a homeowner could make repairs to their roof if the homeowner lived there and does not hold it for lease.

Mr. Gummey stated that statute requires 15 days notice for month-to-month tenants and 7 days notice for week-to-week tenants.

Jay Crocker made a motion to find Ms. Neff is in violation of conditions C, E, G, H, I and J; seconded by John Shelby. Mr. Crocker stated condition D was purposely omitted due to a lack of sufficient evidence. Motion passed unanimously on roll call vote 7-0.

Jay Crocker made a motion to give Ms. Neff until October 18<sup>th</sup>, 2005 meeting of the Code Enforcement Board to come into compliance or face a \$100.00 per day fine for each and every day the subject property remains in violation; seconded by Carol Kerrigan.

Chairperson Hawk stated her concern was for the tenants living in this unsafe property for two months while waiting for the remedy.

Mr. Gummey stated he believed there to be two levels of remedy: terminating the tenants or demolition but in order to demolish the structure the tenants must be terminated.

Mr. Crocker stated in the past the City has waited with the HUD Grant Demolitions until it is worthwhile to demolish all structures at once. Mr. Crocker asked Staff if there were any demolitions in the pipelines. Ms. Kunkle stated there were other demolitions in the pipelines; however, the funds would not be available until the next fiscal year beginning October 1, 2005.

Mr. Crocker moved to withdraw his earlier motion and Ms. Kerrigan withdrew her second to that motion.

Michael Slayton made a motion to give Ms. Neff until the October 18<sup>th</sup>, 2005 meeting to come into compliance by vacating and securing the structure and work in the direction of a demolition or face a fine of \$100.00 per day for each and every day the subject property remains in violation; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

Chairperson Hawk stated that Florida Law requires Ms. Neff to inform any potential buyer of the violations and the date the property must come into compliance.

**NEW BUSINESS:**

**CASE NO:** C2005-0195

Clariece Everette  
507 N. Duss Street  
New Smyrna Beach, FL 32168

Violation Location: 507 N. Duss Street

- A. Permitting or causing to be permitted storage of abandoned, junked or discarded motor vehicles upon the subject property in violation of §38-31 (a) 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.

**Wanda Cray was present and sworn in for testimony.**

**Ms. Cray testified the cars had been removed and majority of the debris had been removed. Ms. Cray stated she had not been home to see the progress but her husband had been working on the debris removal all day.**

**Ms. Bobelak presented photographs to the Board for their review that were taken the morning of August 17<sup>th</sup>, 2005.**

**Mr. Gummey asked Ms. Cray to clarify her relationship to the owner Clariece Everette. Ms. Cray stated Ms. Everette, who is deceased, was her husband's great Aunt. Ms. Cray stated that Ms. Everette is still listed as the property owner although her father-in-law is over the house that her and her husband occupy.**

**Ms. Ellis asked Ms. Cray how much time would be needed to come into compliance. Ms. Cray stated it would take no longer than two weeks to clear the property.**

**Mr. Crocker asked City Staff if they were willing to withdraw the "A" violation. City Staff stated they would withdraw the "A" violation.**

**Jay Crocker made a motion finding Ms. Cray in violation and to continue this case until the September 20<sup>th</sup>, 2005 Code Enforcement Board Meeting; seconded by Carol Kerrigan. Motion passed unanimously on roll call vote 7-0.**

**CASE NO:** C2005-0574

Julian C. Lopez, Jr.  
P O Box 731687  
Ormond Beach, FL 32173

Violation Location: Vacant Lot on N Duss

- 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.

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

**Ms. Kunkle presented a photograph of the property to the Board for their review.**

**Mr. Gummey asked for specific clarification to the location of the property.**

**Ms. Kunkle stated the parcel number is 7418-06-01-0120.**

**Mr. Crocker asked Staff how notice was given to the owner.**

**Ms. Kunkle testified that the notice requirements were met by certified mail both on the Notice of Violation and the Notice of Hearing with Julian Lopez, Jr accepting both August 11th, 2005. Ms. Kunkle stated there had been no contact from Mr. Lopez.**

**Michael Slayton made a motion to find Julian C. Lopez, Jr. in violation giving him 10 days to bring this case into compliance or face a \$50.00 per day fine for each and every day the property remains in violation; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.**

**CASE NO: C2005-0576**

J & B Property Group, Inc.  
3351 N 40<sup>th</sup> Street  
Hollywood, FL 33021

Violation Location: 615 N. Duss

- 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.

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

**Ms. Bobelak presented a photograph of the property to the Board for their review.**

**Ms. Kunkle testified that the notice requirements were met by certified mail both on the Notice of Violation and the Notice of Hearing with an unidentifiable signature accepting on August 1<sup>st</sup>, 2005 with no date listed on the green card for the Notice of Hearing.**

**John Shelby made a motion finding J & B Property Group in violation giving them 10 days to bring the property into compliance or face a \$50.00 per day fine for each and every day the property remains in violation; seconded by Carol Kerrigan. Motion passed unanimously on roll call vote 7-0.**

**CASE NO:** C2005-0578

Essie Mae Jackson  
605 N. Duss Street  
New Smyrna Beach, FL 32168

Violation Location: 605 N. Duss Street

- A. Permitting or causing to be permitted inoperable vehicles upon the subject property in violation of §307.4 of the Standard Housing Code, 1997 Edition.
- 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.

**Albert Grayson was present and sworn in for testimony.**

**Mr. Gummey asked Mr. Grayson what his relationship was to the owner of the property. Mr. Grayson testified that Ms. Jackson is his wife.**

**Chairperson Hawk asked Mr. Grayson if he understood the violations held against the property and asked if these had been resolved at this time. Mr. Grayson testified he understood the violations and stated the cars still remain; however, the debris had been removed. Mr. Grayson further stated he would need a couple of weeks to resolve the removal of the three vehicles to the scrap yard.**

**Mr. Crocker asked City Staff if they are in agreement that the “B” violation has been remedied. Ms. Kunkle stated that “B” violation is in compliance.**

**John Shelby made a motion to find Essie Mae Jackson in violation of item “A” giving him until the Code Enforcement Board Meeting to be held September 20<sup>th</sup>, 2005 to come into compliance or face a \$100.00 per day fine for each and every day the property remains in violation; seconded by Susan Ellis. Motion passed on roll call vote 6-1 with Elliott Hoffman as the dissenting vote.**

**CASE NO:** C2005-0579

Howard & Delphine Williams, Jr.  
441 Carla Drive  
Huntingtown, MD 20639

Violation Location: 514 N. Duss

- A. Permitting or causing to be permitted inoperable vehicles upon the subject

property in violation of §307.4 of the Standard Housing Code, 1997 Edition.

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

**Ms. Kunkle presented photographs to the Board for their review that were taken August 17<sup>th</sup>, 2005. Ms. Kunkle testified notices had not been returned from the accused violator and were not posted. Ms. Kunkle stated City Staff would withdraw the case until the next Code Enforcement Meeting to be held September 20<sup>th</sup>, 2005.**

### **DISCUSSION:**

Mr. Hoffman asked Staff what the actual wording for §38-111. Mr. Gummey stated that the actual wording reads:

§38-111 weeds, undergrowth, rubbish, debris, trash, unsightly and unsanitary excavations or depressions on any land or sidewalk within the City limits are detrimental to the health and welfare of the citizens of the City and are hereby declared to be a nuisance.

§38-112 states it is the duty of every owner of land lying within the corporate limits of the city to clear such land and destroy all weeds, undergrowth, rubbish, debris, trash and fill all unsightly and unsanitary excavations or depressions that may be on such land. It shall be the duty of every owner of land with a sidewalk abutting thereon to keep the sidewalk free and clear of all weeds, undergrowth, rubbish, debris and trash.

§38-113 states **(a)** It shall be unlawful for any person to cause or permit junk, scrap metal, scrap lumber, wastepaper products, discarded building materials or any unused abandoned vehicle or abandoned parts, machinery or machinery parts or other waste materials to be in or upon any yard, garden, lawn outbuilding or premises in the city unless in connection with a business enterprise lawfully situated and licensed for such materials. **(b)** It shall be unlawful for any person to permit any accumulation of any of the waste materials mentioned in subsection (a) of this section to be in or upon any yard, lawn, garden, outbuilding or premises in the city if such materials constitute a fire hazard, a hazard to the safety of person or property or an unsanitary condition. **(c)** It shall be unlawful for any person to discard or abandon any of the waste materials mentioned in subsection (a) of this section upon premises not owned or occupied by such person without the consent of the owner thereof or the person occupying the property.

Ms. Kerrigan asked Staff if it would be possible to have a workshop considering there are issues she would like to discuss that are not appropriate during the hearing of cases. Ms. Kunkle stated that Staff can arrange a workshop and asked that the Board

e-mail her availability for the workshop. Staff will inform Board Members of definite times as they become available.

**ADJOURNMENT:**

There being no further business Susan Ellis made a motion to adjourn the meeting; seconded by Michael Slayton. All agreed and the board adjourned at 6:05 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