

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING  
HELD AT 4:30 P.M. – MARCH 17, 2009  
UTILITIES COMMISSION, DEBERRY ROOM, 3<sup>RD</sup> FLOOR, 200 CANAL STREET,  
NEW SMYRNA BEACH, FLORIDA

The Hearing of March 17, 2009 was called to order at 4:30 p.m. Answering to roll call:

Vacant (Chair)  
John Shelby (Vice Chair)  
Michael Slayton  
Keith Gerhartz  
Ken Taylor  
Katharine Cooley

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Administrative Specialist Claudia Soulie. Board Member Pat Arvidson was absent.

**DISCLOSURE OF EX PARTE COMMUNICATIONS:**

Members of the Citizens Code Enforcement Board are asked to please disclose, for the record, the substance of any ex parte communications that have occurred prior to this public hearing.

None

**APPROVAL OF MINUTES:**

Minutes from the 2/17/2009 Code Enforcement Board Hearing

Mr. Gerhartz asked that the minutes reflect the fact that the respondents in case C2007-0179 Sunset Marine 101 Due East decided not to pursue a variance and that, regardless of which route they choose, the property had to be in compliance by the date given to them by the Board or a daily fine would accrue.

Mr. Gerhartz continued under the topic of discussion (Board Member's role in participating in a public meeting) he wanted Mr. McDole's opinion included.

Mr. Shelby asked if there were any objections to these additions. There were none.

**Mr. Gerhartz made a motion to approve the minutes of the February 17, 2009 hearing including the requested additions; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 5-0.**

Mr. Gerhartz asked to be excused by 5:30 pm should the hearing still be in session.

### **SWEARING OF CITY STAFF:**

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

### **CASES IN COMPLIANCE WITH THE BOARD'S ORDER:**

N/A

### **OLD BUSINESS:**

#### **C2007-0829:        Gilbert L. Dannehower 137 Cunningham Dr.**

Permitting or causing to be permitted tree removal without the required tree removal permit in violation of §604.051 A. of the Land Development Regulations.

July 15, 2008: The Board found Gilbert L. Dannehower in violation and gave Mr. Dannehower 30 days to bring the property into compliance. Mr. Dannehower failed to comply with the Board's Order and the fine of \$250.00 per day started on the 18<sup>th</sup> day of August, 2008.

August 19, 2008: The Code Enforcement Board's Hearing was cancelled due to Tropical Storm Fay.

September 16, 2008: Gilbert L. Dannehower requested a modification to the Board' Order dated July 15, 2008. The Board modified the Order giving Mr. Dannehower until September 15, 2009 to come into compliance. Mr. Dannehower is to provide the Board with quarterly reports with the first report due on December 16, 2008.

February 17, 2009: The Board reviewed Mr. Dannehower's first quarterly report.

Ms. Kunkle informed the Board of a typographical error in the March 17, 2009 agenda and asked for it to be corrected as follows:

The date in the chronological case summary above needed to be changed from ~~February 17, 2009~~ to January 20, 2009.

Ms. Kunkle continued that the following copies had been included in the Board member's agenda package:

- The contract between Mr. Dannehower and Joe Young (Biological Consulting Services)
- A letter from Joe Young to D.E.P. requesting a meeting

- Joe Young's email to Ms. Kunkle confirming the meeting with a representative from D.E.P.

Mr. Shelby asked staff if they were satisfied with the report, which Ms. Kunkle affirmed.

Mr. Slayton inquired if a motion was needed and Ms. Kunkle stated that none was necessary as Mr. Dannehower had until September 2009 to come into compliance.

Mr. Gerhartz asked when the next quarterly report was due. Ms. Kunkle stated the report was due in June and would be before the Board at the July hearing.

**VII. NEW BUSINESS:**

**C2008-1033:**

**Audio Vision  
843 N. Dixie Freeway**

**[SERVED]**

- (A) Permitting or causing to be permitted a business operation (Audio Vision) without having paid the business license tax in violation of Article V. Occupational Licenses §74-146. of the City Code of Ordinances.
- (B) Permitting or causing to be permitted prohibited signs upon the subject property in violation of Article VI. Development Design & Improvement Standards §604.14. of the Land Development Regulations.

Ms. Soulie informed the Board that Audio Vision was in compliance with item A.

Mr. Shelby stated for the record that no one was present on behalf of this case and asked staff for their recommendation.

Ms. Bobelak introduced pictures into evidence taken by herself and Ms. Kunkle the day of the hearing. The pictures depicted two (2) signs that were in violation with the City's Land Development Regulations. Ms. Bobelak confirmed that Audio Vision was in compliance with item A and continued that the owner of Audio Vision had been in touch with staff, but had not followed through with removing the signs as of the date of today's hearing.

Ms. Bobelak recommended the Board find the respondent in non-compliance and impose a \$50.00 per day fine.

Mr. Gerhartz inquired if both signs were in non-compliance, which Ms. Bobelak affirmed.

**Mr. Slayton made a motion to find the subject property in non-compliance and gave the owner until April 1, 2009 to come into compliance or face a fine of \$50.00 per day; seconded by Mr. Taylor. Motion carried unanimously on roll call vote 5-0.**

**C2009-0044**

Vazquez, Bernard, Jr. & Bonnie A.  
1907 S. Atlantic Avenue

- A) Permitting or causing to be permitted the exterior of a structure that has not been maintained in good repair, and sanitary condition and poses a threat to public health, safety and welfare.

Permit # A2009-0641 was issued on March 3, 2009 for the following:

Re-roof with shingles. Peel & stick underlayment. Install hardi board siding. Replace rear door. Replace windows. Repaint exterior.

Ms. Soulie informed the Board that this case was in compliance.

**C2009-0049**

Bogumil, Walter A. & Natallie M.  
4091 Hill Street

- A) Permitting or causing to be permitted the alteration (concrete) of existing stormwater runoff patterns without first obtaining a permit from the city engineer's office.

Ms. Kunkle asked for a continuance of this case until the April 21<sup>st</sup>, 2009 hearing, as the respondent was actively working with the Planning staff. Ms. Kunkle continued that the Engineering Department had already approved the application.

**Mr. Gerhartz made a motion to continue case C2009-0049 until the April 21<sup>st</sup>, 2009 hearing; seconded by Mr. Taylor. Motion carried unanimously on roll call vote 5-0.**

**C2009-0053**

Beer, George P. & Gail E. Ahrens H&W  
1632 N. Atlantic Avenue

**[SERVED]**

- A) Permitting or causing to be permitted the alteration of existing stormwater runoff (fill) patterns without first obtaining a permit from the City Engineer's office.

Permit #E2009-0097 was issued on March 4, 2009 for the following: Add fill around the pool deck.

Mr. Shelby stated that this case did not need to be heard as in was in compliance. Staff affirmed that statement.

**REPEAT BUSINESS:**

N/A

**ELECTION OF OFFICERS:**

Chair  
Vice Chair

The Election of officers took place after discussion.

**DISCUSSION:**

Code Enforcement Board's Internal Rules and Regulations

Mr. Shelby asked the Code Board Members if they had any comments or amendments pertaining to the Internal Rules and Regulations.

Mr. Gerhartz asked Mr. McDole and the Board about the possibility of adding "Board Business" to Article VI (Order of Business), Section 1.

Mr. McDole stated that there was no problem as this could be considered internal discussion.

Ms. Kunkle re-confirmed that this would not be a problem, as she recalled discussion between herself and Mr. McDole stating that this is a quasi-judicial hearing, not a board meeting.

Mr. McDole reiterated that the members could discuss the internal mechanisms of the Board and not "outside" business or specific cases under a "board business" or "discussion" section of the agenda.

Mr. Gerhartz clarified that he felt that the time of the hearing was the only possibility for Board Members to ask questions and discuss items as the sunshine laws prohibited emails and phone calls between Board members.

Mr. Shelby stated that any amendments to the Internal Rules and Regulations discussed today would be voted on at the next Code Board Hearing.

Mr. Slayton inquired if "Discussion" and "Board Business" was the same thing, as the Discussion topic had been part of past agendas. Ms. Kunkle stated that it had been taken off.

Mr. Taylor inquired why Board members were not able to exchange emails about any subject.

Mr. McDole stated that the Attorney General did not recommend communications among Board Members outside of the open meeting and that all information needed to be sent through the Code Enforcement staff so as not to conflict with the sunshine law.

Mr. Taylor objected to the way the Attorney General and other Attorney's interpreted that law.

A brief discussion ensued between the Board members and staff.

Mr. Gerhartz inquired about Section VI Item B – Abstention that indicated that a Memorandum of Voting Conflict had to be filed by the abstaining member. Mr. Gerhartz stated that he had abstained in the past and had not filed such a form.

Mr. McDole informed the members that if there was a financial conflict, State Law required the form and Mr. Gerhartz's abstentions were "due process" reasons.

Mr. Gerhartz asked if staff would inform the Board Members, if they have to fill out a memorandum of a voting conflict, which staff affirmed.

Mr. Gerhartz inquired about Article VIII section 1 item k - Hearings, if the Board Orders where being mailed as specified in the regulations. Ms. Kunkle and Mr. Shelby confirmed that this was being done.

Ms. Kunkle suggested redoing the entire section 1 under Article VI to include all items of business currently on the agenda. The Board agreed.

Mr. McDole suggested amending the following items to read:

Article V Section 6: b) Abstention ..... except if a member has a ~~personal interest~~ in a matter, replace to read .....has a possible conflict of interest in a matter.

A discussion ensued about the difference between a personal, financial or case created conflict.

Article X Mr. McDole would like to add a Section 3 to this article that states:

Section 3: In the event of a conflict between these rules and Chapter 162 of the State Statutes, the provisions of Chapter 162 shall prevail.

Ms. Kunkle duly noted the amendments.

Vice Chairman Shelby asked if the members had any other items for discussion, and there being none, moved to the election of officers.

**ELECTION OF OFFICERS:**

Chair  
Vice Chair

Mr. Slayton nominated John Shelby for Chairman. Mr. Taylor moved to close the nominations. The vote was unanimous (5-0).

Mr. Gerhartz nominated Michael Slayton for Vice Chair. Mr. Taylor moved to close the nominations. The vote was unanimous (5-0).

**ADJOURNMENT:**

**Mr. Taylor moved to adjourn at 5:00 p.m. and all agreed.**

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:

Claudia Soulie  
Administrative Specialist  
% City Hall  
210 Sams Avenue  
New Smyrna Beach, FL 32168-9985  
Telephone: 386.424.2265  
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