

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING  
HELD AT 4:30 P.M. – MAY 19, 2009  
UTILITIES COMMISSION, DEBERRY ROOM, 3<sup>RD</sup> FLOOR, 200 CANAL STREET,  
NEW SMYRNA BEACH, FLORIDA

The Hearing of May 19, 2009 was called to order at 4:30 p.m. Answering to roll call:

John Shelby (Chair)  
Michael Slayton (Vice Chair)  
Pat Arvidson  
Keith Gerhartz

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Administrative Specialist Claudia Soulie. Katharine Cooley arrived at 4:38 pm and Ken Taylor 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.

Mr. Slayton stated that he had a conversation with Ms. Kunkel that he was familiar with case number C2008-0448 (Lena Joseff, 7 Lynn Court) and there was a possibility that he would become the contractor of record.

**APPROVAL OF MINUTES:**

Minutes from the April 21, 2009 Code Enforcement Board Hearing

**Ms. Arvidson made a motion to approve the minutes of the April 21, 2009 hearing as written; seconded by Mr. Gerhartz. Motion carried unanimously on roll call vote 4-0.**

**SWEARING OF CITY STAFF:**

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

**V. CASES IN COMPLIANCE WITH THE BOARD'S ORDER:**

**C2009-0084:            Bud's Automotive            1101 N. Dixie Freeway [SERVED]**

Permitting or causing to be permitted the operation of a business (Bud's Automotive) without having paid the business license tax in violation of Article V. Occupational Licenses §74-146. of the City Code of Ordinances.

**April 21, 2009:** The Board found case C2009-0084 in violation and gave the respondent ten (10) days from the date of the hearing to make contact with Code Enforcement Staff or face a fine of \$50 per day.

**Fine Totals:**

Eight hundred fifty dollars (\$850.00) for a total of 17 days, May 2 – May 19, 2009

Ms. Kunkle asked for the Board to find this case in compliance. Mr. Gerhartz inquired about the fines and Ms. Kunkle stated that the case came into compliance before the fine started accruing.

**Mr. Slayton made a motion to find case C2009-0084 in compliance; seconded by Ms. Arvidson. Motion carried unanimously on roll call vote 5-0.**

Ms. Cooley, for the record, stated that she did not have any ex parte communications pertaining to any of the cases on the agenda.

**VI. OLD BUSINESS:**

**C2008-0259: Carol Ann Felber, Etal 700 Wayne Avenue [SERVED]**

Permitting or causing to be permitted construction (installation of windows and enclosed garage) without the required permits in violation of §26-171. of the City Code of Ordinances.

**May 20, 2008:** The Board found the respondent in violation and required that the necessary permits be obtained within two (2) weeks of the date of receipt of this order or two (2) weeks from the date the property being posted. Further the respondent shall pay a fine of \$200.00 per day for each and every day the violation continued past the 6<sup>th</sup> day of June 2008.

**Fine Totals:**

Sixty-nine thousand four hundred (\$69,400) for a total of 347 days. (June 7, 2008 – May 19, 2009)

Mr. Eric M. Roberts was present on behalf of this case and was sworn for testimony. Mr. Roberts stated that he had inherited the house from his deceased aunt and had yet to take her name off the deed.

Mr. Roberts informed the Board that he had allowed a possible buyer to perform the work and was not aware that permits had not been pulled. Mr. Roberts continued that this buyer violated the contract and he had to engage an attorney.

Ms. Bobelak submitted photos taken in May 2008, when Code Enforcement first became aware of the violation and a photo showing that the property was posted with the Notice of Hearing on May 8, 2009.

Ms. Arvidson asked why it has been a year since this case was last heard.

Mr. Roberts stated that he was not able to make the hearing in 2008 and staff canceled the subsequent hearing, due to a Tropical Storm. Ms. Bobelak stated that she had noticed on the Public Records site that this property had gone into foreclosure and out of foreclosure. Mr. Roberts affirmed that statement.

Mr. Slayton inquired if the respondent needed only to pull a permit to come into compliance. Staff concurred.

Ms. Arvidson asked if Mr. Roberts was authorized to pull a permit. Ms. Kunkle testified that if the house had been legally probated, he would be able to pull a permit as the owner/contractor. Mr. Roberts stated that the house was in his name.

A brief discussion ensued regarding the current fine and Mr. McDole inquired if a lien had been recorded. Ms. Kunkle stated that this would have been staff's recommendation for today's hearing, but the next step was at the Board's discretion.

**Mr. Slayton made a motion to continue case C2008-0259 until the July 21<sup>st</sup>, 2009 hearing; seconded by Ms. Cooley. Motion carried unanimously on roll call vote 5-0.**

## **VII. NEW BUSINESS:**

**C2008-0448:                      Lena Joseff                      7 Lynn Court                      [SERVED]**

Permitting or causing to be permitted the construction of an accessory structure without the required permit(s) in violation of §105.1 of the Florida Building Code.

Noone was present on behalf of this case. Mr. Slayton stated that he would abstain from voting on this case (see attached FORM 8B MEMORANDUM OF VOTING CONFLICT) and stated that he could give an update.

Mr. Michael Slayton was sworn for testimony and stated that he had met with Ms. Joseff and an Engineer pertaining to a utility shed in the backyard constructed by her husband without a permit. Mr. Slayton continued that they were waiting on the Engineer's drawings and asked for more time.

**Ms. Arvidson made a motion to find the above property in violation and to give the respondent until the July 21<sup>st</sup>, 2009 hearing to come into compliance; seconded by Mr. Gerhartz. Motion carried on roll call vote 4-0. Mr. Slayton abstained.**

**C2008-1156: Dusan Jovic & Robert Vic Lasic 2512 N. Dixie Freeway**

Permitting or causing to be permitted the construction of an addition without the required permits in violation of §105.1 of the Florida Building Code.

No jurisdiction.

Ms. Cooley inquired about the notification process and was informed that sometimes the certified mail was not accepted and thus returned to the sender. At that time, Code Enforcement staff would post the property and City Hall with the correspondence, giving the board jurisdiction to hear the case.

**C2009-0039: Steve's Automart 539 N. Dixie Freeway [ SERVED ]**

- A. Permitting or causing to be permitted the operation of a business (Steve's Automotive) 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 alterations and/or installation of a sign(s) without the required permit in violation of Article VI §604.14 D.

No one was present on behalf of this case.

Ms. Bobelak presented photos she had taken the morning of the hearing. Ms. Bobelak continued that the Finance Department had contacted the respondent on April 7, 2009 to inform them that their business license was ready for pick up, which at this point still had not been picked up.

Ms. Bobelak stated that she had been in contact with a representative from Steve's informing them of the steps required, but to no avail as of yet. Ms. Bobelak recommended the Board find the property in violation, give them until the 29<sup>th</sup> of May, 2009 to come into compliance or assess a per-day fine of \$50.

Mr. Gerhartz inquired if the signs conformed to the City's sign ordinance and was informed by staff that they did not. Mr. Gerhartz felt strongly about business cluttering up the City with non-conforming signs and wanted to send a strong message. Mr. Gerhartz asked if he could make two (2) separate motions, which Mr. McDole affirmed.

**Mr. Gerhartz made a motion to find the above property in violation with item A. and to give the respondent seven (7) days from the date of the hearing to come into compliance or face a fine of \$50 per day; seconded by Ms. Cooley. Motion carried unanimously on roll call vote 5-0.**

A brief discussion ensued regarding the timeframe for getting permits for the signs and the requirements to get the signs to conform to City Codes.

Mr. Mark Rakowski, Development Services Director was sworn for testimony and informed the Board that any business had to request a permit whenever they made changes to their signs.

**Mr. Gerhartz made a motion to find the above property in violation with item B. and to give the respondent thirty (30) days from the date of the hearing to come into compliance or face a fine of \$250 per day; seconded by Mr. Slayton. Motion carried on roll call vote 3-2 with Ms. Arvidson and Ms. Cooley casting the dissenting votes.**

Ms. Bobelak added for the record that the certified mail had been signed for.

**C2009-0059: Dodge, Stephen C. & Marjorie A. 379 Wild Orange Dr.**

Permitting or causing to be permitted the construction of a garage without the required permits in violation of §105.1 of the Florida Building Code.

No jurisdiction.

**C2009-0083: Richard & June A. Gentile 785 Pine Shores Blvd.**

Permitting or causing to be permitted insect infestation (termites) in violation of §308.1 of the International Property Maintenance Code, 2006 Edition.

Ms. Kunkle stated that staff was withdrawing the case as a third party was working on resolving the violation.

**C2009-0098: Patricia Davies Gochis 2301 Saxon Drive**

- 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.
- B. Permitting or causing to be permitted an outdoor storage unit upon the subject property that is not a customary accessory use to the primary use in the R-1 Single Family zoning district of the Land Development Regulations.
- C. Section 303 titled Swimming Pools, Spas and Hot Tubs of the International Property Maintenance Code, 2006 Edition.

§303.1 Swimming pools. Permitting or causing to be permitted a swimming pool to exist that has not been maintained in a clean and sanitary condition, and in good repair.

§303.2 Enclosures. Permitting or causing to be permitted a pool enclosure that has not been properly maintained in good repair.

Ms. Soulie stated that the correct case number should read C2009-0009 and informed the Board that they had no jurisdiction.

**REPEAT BUSINESS:**

None

**ADOPTION OF NEW INTERNAL RULES AND REGULATIONS**

**Mr. Gerhartz made the motion to approve the Internal Rules and Regulations as written, seconded by Mr. Slayton. Motion carried unanimously on roll-call vote 5-0.**

**DISCUSSION:**

Mr. Shelby stated that he would give a small report at next Tuesday's City Commission meeting and inquired if the other Board members had any input.

Mr. Gerhartz was concerned about the status of the dilapidated structures ordinance and inquired about the relationship between the Building Trades Board and Code Enforcement.

Ms. Kunkle gave a brief summary of all properties that currently fall under this ordinance and that Code Enforcement staff was working with the Building Department to rectify the issues.

Ms. Cooley asked if Code Enforcement could not address a structure that was in foreclosure. Mr. McDole stated that Code Enforcement still had jurisdiction and could levy fines, however, the mortgage had priority over any other fines.

Mr. Gerhartz was frustrated that some property owners of dilapidated structures would pull a permit and do just enough work to keep the permit alive, but not making any real effort to complete the project. Mr. Gerhartz felt that there was a structural issue on how these situations were being handled and this situation should be brought to the City Commissions attention.

Mr. Rakowski stated that a contractor with a permit had to schedule an inspection every six (6) months and if they passed, their permit was extended another six (6) months. This applied to new construction as well as remodeling projects.

Ms. Kunkle added that the only leverage the Code Board had was to levy fines for properties that were not in full compliance, because as soon as they had their permit, it became a construction site and as long as they passed their inspections, there was no real incentive to complete the project in a timely manner.

Mr. Gerhartz would like to see research done what other Cities do with similar cases.

Ms. Cooley thought it would be possible to amend the State's Building Codes.

A brief discussion ensued about at what options where available to bring about changes to this situation, at what level one had to start and who governed those codes.

Ms. Arvidson inquired if there had been any interested parties for the vacant Code Board position and was informed there had not been.

Mr. Rakowski brought back the topic of the sign ordinance and stated that he would be willing to be of assistance. Mr. Rakowski felt that the City of New Smyrna Beach had a very decent sign ordinance.

Another discussion ensued about variable message signs and what impact they could have on the town, bus bench advertising for a minimal amount of revenue.

Mr. Rakowski also thought it beneficial to address the fact that Code Enforcement was complaint driven, and suggested bringing this up to the Commission as well.

Ms. Cooley informed the Board that she had a chance to go to Washington as a liaison for the Board of Realtors for Susan Kosmas.

### **ADJOURNMENT:**

**Ms. Arvidson moved to adjourn at 5:40 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  
Fax: 386.424.2148