

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING  
HELD AT 4:30 P.M. – JANUARY 19, 2010  
COMMISSION CHAMBERS, 210 SAMS AVENUE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of January 19, 2010, was called to order at 4:30 p.m. Answering to roll call were:

John Shelby (Chair)  
Michael Slayton (Vice Chair)  
Pat Arvidson  
Ken Taylor  
Megan Badgley

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole and Permit & License Technician Dorlisa Pogany. Katharine Cooley and Keith Gerhartz were absent.

II. **DISCLOSURE OF EX PARTE COMMUNICATIONS:**

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

Mr. Slayton stated for the record that Shane Miller of All Phases LLC came to his job site to discuss his case #C2009-0824. Mr. Slayton told Mr. Miller that he could not discuss the case. He stated that they discussed other things but that it had no influence on him regarding Mr. Miller's case. Mr. Shelby asked if he had any prejudice. Mr. Slayton stated no prejudice, no nothing regarding the case.

III. **APPROVAL OF MINUTES**

November 17, 2009

**Ms. Arvidson made a motion to approve the minutes of the November 17, 2009, hearing as written; seconded by Mr. Taylor. Motion carried unanimously on roll call vote 5-0.**

IV. **SWEARING OF CITY STAFF**

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



**Mr. Slayton made a motion to change the Board's compliance date from January 19, 2010 to March 16, 2010; seconded by Mr. Taylor. Motion carried unanimously upon roll call vote 5-0.**

**C2009-0710: TBC Retail Group, Inc 1698 State Road 44**

(A) Permitting or causing to be permitted the use of prohibited signs in violation of Article VI. Development Design & Improvement Standards, §604.14 B. of the Land Development Regulations.

Mr. Shelby asked for the record to reflect that no one was present to represent this case and asked staff for their recommendation.

Mr. McDole stated the issue today is to determine whether or not TBC Retail Group came into compliance within 48 hours given by the Board on November 19, 2009 and whether to impose the fine starting on that day.

Ms. Kunkle stated it is also to authorize the recording of the lien.

A discussion ensued about clarification on how to determine if it is in compliance, number of days of non-compliance and the amount of fines.

Mr. McDole stated the Board needed to hear on what dates they were in non-compliance after November 19, 2009 and determine whether or not to assess fines for those dates.

Mr. Shelby asked staff to present the dates of non-compliance.

Officer Bobelak testified there are eleven (11) days documented where they were not in compliance.

Eric Wilcoxin was sworn for testimony.

Mr. Wilcoxin testified that he is the owner of American Auto and has to comply with all the City's codes and would like to see his competition have to do the same. Further, Mr. Wilcox testified that he has dates and photos of the inflatable signs in addition to the City's and asked the City to fine them.

Mr. Shelby explained that fines can be assessed as a lien and the City can foreclose on a lien if the property owner does not pay the fines.

Mr. McDole stated that liens could be foreclosed after three (3) months just like they foreclose on a mortgage.

A brief discussion ensued about adding the additional days from people other than staff and if it was legal.

Mr. McDole stated Mr. Wilcoxin had to give testimony today where it can be incorporated into the meeting and the Board could use the additional days.

Mr. Wilcoxin testified the 30 ft inflatable gorilla was up November 27 – 29, 2009 and asked for these dates to be incorporated into dates provided by Staff.

Ms. Arvidson asked staff for a recommendation.

Ms. Kunkle recommends the Board impose a \$250 per day fine and authorize the City to record a lien.

**Mr. Taylor made a motion to impose a fine of \$3500 as of today plus a fine of \$250 per day for each day that the property is in violation after today; seconded by Ms. Badgely. Motion carried unanimously on roll call vote 5-0.**

## **VII. NEW BUSINESS:**

### **C2009-0309:**

**Daniel C. Troian**

**409 Magnolia St**

Permitting or causing to be permitted a residential property to exist that has not been kept clear of dead/dying trees(s) in violation of §307.4 of the Standard Housing Code, 1997 Edition.

Mr. Shelby asked for the record to reflect that no one was present to represent this case and asked staff for their recommendation.

Officer Bobelak testified she posted the property on January 8, 2010 and took photos on January 8, 2010 showing the postings and the dead tree that she is dealing with on Mr. Troian's property. Further, Officer Bobelak testified that Mr. Troian signed for the original notice in September and he contacted her saying he was trying to get some bids on having the tree removed. Officer Bobelak testified that she has had no further contact since November 9<sup>th</sup> and he did not accept the certified mail, which is why she posted the property.

Officer Bobelak testified for the record she has been in touch with the neighbors and branches are falling onto their property. Further, Officer Bobelak said that she contacted the Utilities Commission and they did take some of the tree limbs off from the utilities lines.

Mr. Slayton asked staff for a recommendation.

Officer Bobelak recommends finding the property in non-compliance and give the property owner until the 5<sup>th</sup> of February to bring property into compliance or face a fine of \$50 per day.

**Mr. Slayton made a motion to find case C2009-0309 in violation and give the property owner until February 5, 2010 to come into compliance or face a fine of \$100 per day; seconded by Mr. Taylor. Motion passed on roll call vote 4-1 with Ms. Arvidson dissenting.**

**C2009-0746:                      Empirian Sugartree II, LLC**  
**1917 Sugartree Cir              1921 Sugartree Cir**

Permitting or causing to be permitted the interior of a structure to exist that has not been maintained in good, clean and sanitary conditions in violation of §305.1 of the International Property Maintenance Code, 2006 Edition.

Mr. Shelby asked for the record to reflect that no one was present to represent this case and asked staff for their recommendation.

Officer Bobelak testified that 1917 Sugartree Circle has been brought into compliance. Officer Bobelak testified that the permit was pulled and they had final inspections. Further, Officer Bobelak testified that 1921 Sugartree Circle has not completed the permit paperwork and submitted it but it has been picked up. Officer Bobelak testified she had photos showing the floors in the bathrooms are rotting under the toilets and when you sit on the toilet, it wobbles around.

Mr. Shelby asked staff for a recommendation.

Officer Bobelak recommends to find the property at 1921 Sugartree Circle in non-compliance and give them until February 5<sup>th</sup> to get their permit and final inspections or face a fine of \$100 per day.

**Ms. Badgely made a motion to find 1921 Sugartree Circle in violation and to come into compliance by February 5, 2010 or face a fine of \$100 per day; seconded by Mr. Slayton. Motion carried unanimously on roll call vote 5-0.**

**C2009-0815:                      Beachside Tavern              690 3<sup>rd</sup> Avenue**  
**R & B LLC                      Mark Dam**

Officer Bobelak informed the Board that this case has been brought into compliance.

**C2009-0824:                      All Phases LLC – Michael Shane Miller**

**801 Maralyn Avenue  
709 Evergreen Avenue 711 Evergreen Avenue**

Staff withdrew this case.

**C2009-0825: Bobbi Jean Bresnowitz 629 Dora Street**

Permitting or causing to be permitted discarded and abandoned waste material upon the subject property in violation of Article IV. Nuisances of the City Code of Ordinances, §38-113. Waste material, discarded and abandoned items.

Ms. Bresnowitz and Officer David Williams were present and sworn for testimony.

Ms. Bresnowitz stated that she was not in agreement with some of the violations and it was a matter of what you consider abandoned waste material. Ms. Bresnowitz testified that items under her boat were items such as housewares gathered from the area Churches for the homeless and underprivileged people so that they could have a Christmas.

Officer Williams testified the violation was brought to his attention by a passerby on Dora Street who complained about abandoned material to include wood, trailers and other material on the property that they thought might be in violation of City Ordinance and he has photos. Further, Officer Williams testified that by an inspection from the roadside there were several trailers on the property, one in which is lawfully tagged the other two (2) are not tagged or registered and that the conditions are so bad you can't read the VIN numbers on them to check registration with the State of Florida and does not have a title. Officer Williams testified the materials under the boat were in plastic containers and were household items and were covered up by a tarp. Further, Officer Williams testified some other items included wood material, sheets of plywood where the condition of the plywood had deteriorated to the point that the lamination was separating; a tire under the boat; and lattice work propped up to conceal the debris behind it. Officer Williams testified that he inspected the property today and some of the material under the boat has been removed, but the boat, trailer and lattice work is still there with the sheets of plywood still behind it which is in violation of City Ordinance. Further, Officer Williams testified that the boat is not in operating condition and is not sea worthy.

Ms. Bresnowitz testified the photos shown to her were of her property.

Mr. Slayton asked staff for a recommendation.

Ms. Kunkle asked Officer Williams for his recommendation.

Officer Williams testified that he would like to see the property come into compliance and would like more time for it to come into compliance and maybe point out some other stuff that she may not know that is in violation.

A brief discussion ensued about how much time would be needed to bring the property into compliance and what other actions need to be taken to bring property into compliance.

Ms. Kunkle stated that the City would like to ask Officer Williams a question. Ms. Kunkle asked Officer Williams how much more Ms. Bresnowitz has to do?

Officer Williams testified that the make shift lattice work is still there, there is wood debris behind it, tire under the trailer as far as the boat, he cannot tell you what needs to be done to bring it into compliance and get the trailer tagged. Further Officer Williams testified you would have to go to the property to look.

Ms. Kunkle testified that the next Code Enforcement hearing is February 16, 2010 and asked Officer Williams if that would be sufficient time to bring the property into compliance.

Officer Williams testified that it would be sufficient time.

**Mr. Slayton made a motion to continue case C2009-0825 until the February 16, 2010 hearing; seconded by Ms. Arvidson. Motion carried unanimously on roll call VOTE 5-0.**

**VIII. REPEAT BUSINESS:**

None

**IX. ADJOURNMENT:**

**Mr. Taylor made the motion to adjourn; seconded by Mr. Slayton. All agreed and the hearing adjourned at 5:32 pm.**