

**BUILDING BOARD
MEETING
MARCH 23, 2010**

MEMBERS PRESENT: Mary Fleenor, Chairman
John Burrage, Thomas Cavanaugh, James Getz,
James McClary, David Reeves, Larry Sandles

MEMBERS ABSENT: Peter Coccaro

OTHERS PRESENT: Suzy Russell, Permit Supervisor
John Smith, Plans Examiner
Randy Cole, Building Official
Mark Martella, Board Attorney
Eugenia Beckner

CALL TO ORDER/ANNOUNCEMENTS

A. Roll Call

- Ms. Fleenor welcomed Mr. Getz, recently appointed as an alternate Board member.

APPROVAL OF MINUTES

A. Meeting of January 26, 2010

- Mr. Burrage MOVED, Mr. Sandles SECONDED approval of the January 26, 2010 minutes.
MOTION CARRIED UNANIMOUSLY.

Note: New Business was heard following Other Business.

NEW BUSINESS

A. Election of Officers

- Recording Secretary Kelly opened the floor for nominations for Chairman.
- Mr. Burrage NOMINATED Ms. Fleenor for Chairman.
- Recording Secretary Kelly called three times for any other nominations.
- As there were no other nominations, Ms. Fleenor was appointed Chairman by acclamation.
- Recording Secretary Kelly then opened the floor for nominations for Vice Chairman.
- Mr. Cavanaugh NOMINATED Mr. Sandles for Vice Chairman.
- Recording Secretary Kelly called three times for any other nominations.
- As there were no other nominations, Mr. Sandles was appointed Vice Chairman by acclamation.
- Recording Secretary Kelly swore in all participants.

- B. Southwest Property Management & Aluminum, Eugenia Elizabeth Beckner, Qualifier - Violation of City of Punta Gorda Code Of Ordinance 7-13(a)(6), Willful or deliberate disregard or negligent violation of the City Building Code
- Ms. Suzy Russell, Permit Supervisor, announced the City issued a permit on January 4, 2010, to Southwest Property Management & Aluminum (SPMA) to redo a driveway with pavers at 20 Sabal Drive. She advised SPMA requested a line and grade inspection on January 5, 2010, at which time Mr. Dale Harper, Engineering Technician, stated the contractor wished to use an unapproved drain structure in the right-of-way (ROW), adding he advised the contractor same must be approved by the Building Division, which was not done. She continued Mr. Doug Dugan, an SPMA representative, subsequently met with Mr. John Smith, Plans Examiner, with the product in hand, adding the product was not approved. She explained Mr. Smith informed Mr. Dugan the product specifications did not state it could sustain vehicular traffic; thus, staff requested proof from SPMA attesting to the product's ability to do so but had yet to receive same. She concluded the job was completed without any authorization to do so.
 - Mr. Smith attested to Ms. Russell's testimony, confirming he made it clear he was seeking something with an approval for vehicular traffic. He mentioned the only documentation he had received was the product's ability to sustain pedestrian traffic. He continued Ms. Eugenia Beckner, SPMA qualifier, advised him approximately two weeks earlier she was awaiting an engineer's letter from the manufacturer for this use.
 - Mr. Sandles asked if the product was used in a box culvert in a driveway or a swale.
 - Mr. Smith explained the site was originally equipped with a swale, stating Mr. Harper confirmed there was insufficient clearance for a culvert; thus, the concrete had to be removed to allow for installation of the pavers and a new, concrete-based basin installed.
 - Mr. Sandles asked if this was a swale driveway or a culvert, questioning the drain size.
 - Mr. Smith replied approximately two inches in diameter.
 - Ms. Fleenor asked if same was at the level of or beneath the pavers.
 - Mr. Smith replied the finished product was level with the pavers while the actual drainage portion of the product was beneath the pavers.
 - Mr. Cavanaugh asked if the product was embedded in concrete.
 - Mr. Smith replied it was embedded in the sand base used for the pavers.
 - Mr. McClary asked what was necessary to remedy the problem.
 - Mr. Smith replied confirmation from the manufacturer attesting to the product's certification regarding its ability to withstand vehicular traffic.

- Ms. Russell reiterated the contractor was advised of all of the above but proceeded to complete the project, disregarding the City's direction.
- Mr. Burrage asked if staff believed the required specifications were unattainable.
- Mr. Smith replied affirmatively, stating he had reviewed the specifications via the manufacturer's web site.
- Ms. Beckner announced she had not received the letter of authorization from the manufacturer, Stagmeier LLC, but had been verbally advised it was approved for vehicular traffic. She acknowledged the job was completed; however, she had no objection to removing the product if required. She testified to observing the product's use in other driveways in Punta Gorda.
- Ms. Fleenor asked why the job was completed without the City's approval.
- Ms. Beckner replied she had believed she would receive approval, reiterating she had seen the product used in several different driveways.
- Ms. Fleenor asserted the job should not have been completed without proper authorization.
- Mr. Sandles commented he had not seen this product used anywhere, questioning Mr. Smith's experience regarding same.
- Mr. Smith replied he had not observed its use within City limits.
- At the Board's request, Ms. Russell outlined staff's recommendations as follows: (1) respondent has 30 days to correct the job at 20 Sabal Drive and pass final inspection; (2) respondent must provide proof of current worker's compensation coverage and current address prior to performing any work within City limits; (3) suspend respondent's permitting privileges until the job at 20 Sabal Drive passed final inspection; (4) respondent to be placed on probation for one year if 20 Sabal Drive job passed final inspection within thirty days; (5) if final inspection failed or was not passed within 30 days, respondent's permitting privileges would be revoked and the matter turned over to the Department of Business and Professional Regulation (DBPR).
- Mr. Sandles MOVED, Mr. Cavanaugh SECONDED approval of staff's recommendations.
- Mr. Cavanaugh questioned the homeowner's standing with regard to this issue.
- Ms. Russell confirmed the homeowner was aware of the situation.
- Mr. Cavanaugh requested photographs be made available in the future for these types of cases.
- Ms. Fleenor confirmed there were no other comments or concerns.
- MOTION CARRIED UNANIMOUSLY.
- Ms. Beckner questioned the particulars of the above mentioned one-year probation.

- Ms. Russell explained any deficiencies, violations or complaints would be automatically brought back before the Board for further disciplinary action.
- Mr. Randy Cole, Building Official, then announced Mr. Mark Martella, Board Attorney, was unavailable for the Board's May 2010 meeting, adding he was unavailable for their June 2010 meeting.
- Mr. Sandles mentioned he most likely would also not be available in May 2010.
- Ms. Fleenor asked if an alternate Board Attorney was available in the event Mr. Martella could not attend a particular meeting.
- Mr. Martella replied he was a sole practitioner in his office; however, he stated he could provide coverage if necessary, dependent upon the City's approval.
- Mr. Cole commented he did not anticipate a need to meet in either May or June 2010.
- Mr. Cavanaugh then asked if building activity had increased.
- Mr. Cole replied somewhat, primarily maintenance related.

Note: Other Business was heard prior to New Business.

OTHER BUSINESS

- Mr. Martella distributed copies of Resolution #2870-10, as delineated in the agenda material, which formally adopted the City's procedures for quasi-judicial proceedings and rules for ex-parte communications. He acknowledged the Board had just received same and had not had the opportunity to conduct a thorough review; however, he suggested members study same and be prepared to submit any questions at their next meeting.
- Ms. Fleenor requested clarification of the rules related to allowable evidence and burden of proof.
- Mr. Martella advised hearings would be conducted informally but with decorum, adding formal rules of procedure would not apply except as indicated otherwise within the rules; however, he noted fundamental due process must be accorded. He explained evidence must be competent and substantial and was defined as relevant and material which a reasonable mind would accept as adequate to support the conclusions reached. He acknowledged a concern regarding ex-parte communications, specifically communications outside of a hearing and whether or not same could be considered, stating same was permissible but may not form the sole basis of any decision. He noted any ex-parte communication, whether written or verbal, must be disclosed at the time of the hearing. He explained any written communication was considered hearsay; thus, the author must be present at the hearing to testify so as to be subject to cross examination.

- Ms. Fleenor confirmed the Board could request a continuance in the event the author of such communication was not present.
- Mr. Martella agreed; however, the Board should not table a matter simply because the City had not met its burden of proof. He observed Section V, Witnesses and Supporting Materials, indicated both the City and the applicant would submit their arguments in writing prior to the hearing along with copies of exhibits. He pointed out Section VI allowed an interested party to intervene and described the process for same, adding the public was allowed to make a presentation, the latter being limited. He clarified the Board did not have to follow the same rules of evidence as that followed in a courtroom; however, irrelevant, immaterial, harassing, defamatory or unduly repetitive evidence must be excluded. He mentioned any statements of counsel were to be considered only as argument and not testimony.
- Mr. Cavanaugh asked if the Board was required to ask for public hearings under certain circumstances and under the Sunshine Law.
- Mr. Martella replied all meetings were required to be open to the public.
- Mr. Cole commented on Section V, asking if the Board would be able to proceed on a matter where the applicant had failed to submit a written argument. He pointed out the verbiage regarding same was "shall" nor did he see a specific timeframe.
- Mr. Martella responded he planned to address that concern with City Attorney David Levin as he also believed a timeframe should be delineated.
- Mr. Cole questioned the result if an applicant failed to abide by Section V.2.
- Mr. Martella replied the applicant would technically be barred from proceeding, acknowledging some leeway should be granted in that these rules were new.
- Mr. Cole concluded he would include this as a discussion item on the Board's next agenda.
- Mr. Sandles noted same was referred to from another standpoint in Section XVI, Failure of Applicant to Appear.
- Ms. Fleenor expressed concern with regard to what appeared to be a conflict relative to a respondent's participation in certain proceedings.

Note: New Business was heard following Other Business.

ADJOURNMENT

- Meeting Adjourned: 9:45 a.m.

Mary Fleenor, Chairman

Mary Kelly, Recording Secretary