

**CODE ENFORCEMENT BOARD
MEETING
FEBRUARY 25, 2009**

MEMBERS PRESENT: Heinz Schmidt, Chairman
Kate Albers, Tom Bailey, Sandy MacGibbon,
Paul Meyer, Jim Stevens, Ed Viola

MEMBERS ABSENT: Richard Kresge

OTHERS PRESENT: Randy Wright, Dawn Lewis, Maricela Perdomo,
Perri Turner, Code Compliance Officers; David Levin,
City Attorney; John Polk, Board Attorney; Randy Cole,
Building Official; Donyl Yates, Board Secretary; Douglas Joyce,
Michelle Forsberg, Dawn Quinn, Michael Quinn

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - March 25, 2009

APPROVAL OF MINUTES

- A. Meeting of January 28, 2009
 - Mr. Meyer MOVED, Ms. Albers SECONDED approval of the January 28, 2009 minutes.
MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Kelly swore in all participants.
- A. 09-36447 - CODE COMPLIANCE OFFICER - RANDY WRIGHT
 - Respondent: D & S Property Investments
 - Address of Violation: 1305 Tamiami Trail
 - Violation of Section 7-32(A)(1), page 7-17, Failure to obtain a building permit; Section 26-7.4(A)(2)(e,g), page 26-66, Building principles; Section 26-7.4(E)(10)(g), page 26-71, Highway Commercial.
 - Mr. Schmidt confirmed the respondent was not present.
 - Mr. Meyer MOVED, Mr. Bailey SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
 - Mr. Randy Wright, Code Compliance Officer, stated the subject property was located within City limits. He noted on January 20, 2009, he received a complaint from Dr. Frederick Fox regarding an illegally placed shed in the rear of the respondent's property as well as numerous other sheds also illegally placed at various locations in the downtown area. He explained he informed the owner of the violation, stating the owner in turn expressed his complaints regarding the other sheds. He clarified he

advised the respondent of his intention to address all violations, after which the respondent indicated he would remove his shed only if a nearby business owner removed their shed. He stated that was his last contact with the respondent; thus, he issued a Statement of Violation/Notice of Hearing on February 11, 2009, by certified mail, confirming the respondent's receipt of same. He noted he re-inspected the property on February 20, 2009, adding the violation remained.

- Mr. Stevens questioned the need for a building permit.
- Mr. Wright replied any structure required a building permit, adding the application was then reviewed by the Urban Design Division. He explained an accessory structure in the Highway Commercial (HC) zoning district must be constructed of material similar to the main building.
- Mr. Viola asked if the shed would be allowed if the exterior was changed to coordinate with the building.
- Mr. Wright replied the respondent must apply for the proper building permits and follow the procedure required by City Code.
- Mr. MacGibbon MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Bailey requested clarification of Mr. Wright's conversation with the respondent.
- Mr. Wright reiterated his earlier comments, adding the property owner also stated the shed was "grandfathered," which was erroneous. He noted he confirmed the shed was not present in 2004 but was found to exist in its current location in 2006.
- Mr. Viola commented the shed was not terribly unappealing in appearance; however, it did not coordinate with the main structure in any way.
- Mr. Bailey clarified this was simply a storage shed.
- Mr. Schmidt asked if the Board should allow a specific period of time for the respondent to bring the property into compliance before issuing a Cease & Desist Order.
- City Attorney David Levin recommended allowing ten days to come into compliance, stating same was spelled out in the proposed Compliance Order, as delineated in the agenda material.
- Mr. MacGibbon MOVED, Mr. Viola SECONDED to issue a Cease & Desist Order for future violations providing ten days to obtain proper permits or remove the shed from the premises or a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.
- Mr. Bailey recommended staff move forward on the other sheds which were in violation.

Note: Other Business was heard following Item A, New Business.

B. 09-36441- CODE COMPLIANCE OFFICER - RANDY WRIGHT

Respondent: Stewart & Karen Turnbull

Address of Violation: 3606 Towhee Court

Violation of Section 26-8.11(C,E), Standards of property maintenance.

- Mr. Wright requested a 30 day continuance as clean-up was ongoing, adding the respondents' neighbors were pleased with the progress being made.
- Mr. Meyer MOVED, Mr. Bailey SECONDED to continue Case #09-36441 to March 25, 2009. MOTION CARRIED UNANIMOUSLY.

C. 09-36517 - CODE COMPLIANCE OFFICER - DAWN LEWIS

Respondent: Marc Fratello

Address of Violation: 2241 Bayview Road

Violation of Sections 10-1 & 10-1.1, pages 10-1 & 10-2, Grass/weeds over 12 inches; Section 10-2, page 10-3, Nuisances grass/weeds; Section 9A-12(f), Visual blight; Section 26-3.13(E), page 26-28, Sod; Section 26-8.11(C,E,F), Standards of property maintenance; Section 9A-12(a)(f), Visual blight; Section 26-8.14(c), Standards of structures/uses; Section 26-8.11(g), page 26-89, Standards of property maintenance; Section 9A-20(f), Roofs.

- Mr. Schmidt confirmed the respondent was not present.
- Mr. Stevens MOVED, Mr. Meyer SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
- Ms. Dawn Lewis, Code Compliance Officer, displayed photographs of the subject property, located within City limits, stating a complaint was submitted by electronic mail on February 4, 2009. She reported inspection of the property revealed the following: grass and weeds over 12 inches in height in the rear of the property; landscape overgrown on the seawall; ladders in the rear yard, along with storage and debris such as a rocking chair and gas cans on the boat dock; dirty roof. She noted on February 17, 2009, the respondent informed her he resided out of State and the property was occupied by renters; however, he further stated he would contact his property management company immediately. She continued on February 18, 2009, the property manager advised her all violations would be addressed; however, a re-inspection on February 20, 2009, showed all violations remained.
- Mr. MacGibbon MOVED, Ms. Albers SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Ms. Lewis recommended the Board issue a Cease & Desist Order requiring compliance within 21 days.

- Mr. MacGibbon suggested extending the time to 30 days in light of the roof work needed.
- City Attorney Levin noted the 21 days would not commence until the respondent's receipt of the Board's Order; thus, additional time would automatically be provided.
- Mr. MacGibbon clarified the original complaint was filed by a neighbor.
- Mr. MacGibbon MOVED, Mr. Bailey SECONDED to issue a Cease & Desist Order for future violations requiring compliance within 21 days of receipt of the Board's Order and a \$250 per day fine. MOTION CARRIED UNANIMOUSLY.

D. 09-36473 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO

Respondent: Waterside Design & Development LLC

Address of Violation: 2346 Magdalena Drive

Violation of Section 9A-12(a,b), page 9A-8, Visual blight; Sections 10-1 & 10-1.1, page 10-1 & 10-2, Grass/weeds over 12 inches; Section 10-2, page 10-3, Nuisances grass/weeds; Section 6A-2.14, page 6A-13, Construction site access.

- Mr. Schmidt confirmed the respondent was not present.
- Mr. Meyer MOVED, Mr. MacGibbon SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
- Ms. Maricela Perdomo, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating on January 27, 2009, she observed construction materials throughout the property, including but not limited to the following: industrial oil tank; various pipes on the left side of the property; floating devices in the rear of the canal which had been installed prior to construction for containment purposes; two stakes used to hold up the construction sign; tall grass and weeds in the rear and sides of the property; a sediment barrier; no erosion control in front of the property. She confirmed a Statement of Violation/Notice of Hearing was served upon the respondent on February 17, 2009, requiring compliance by February 20, 2009; however, re-inspection on that date showed the following conditions: various pipes and industrial oil tank remained; grass had been cut; sediment barrier removed.
- Mr. Meyer MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Ms. Perdomo mentioned the lack of erosion control caused a significant amount of runoff into the street when raining, stating she had received a number of complaints regarding same.
- Ms. Albers asked if Ms. Perdomo had been in contact with the respondent.

- Ms. Perdomo replied affirmatively, stating she had provided a detailed list of what must be done to come into compliance.
- Mr. Bailey suggested Ms. Perdomo contact the respondent again as he may be unaware of the remaining violations.
- Ms. Perdomo responded the list she provided was quite clear, stating she had been dealing with the respondent since construction first started; however, construction ended due to the economy. She confirmed Mr. Randy Cole, Building Official, had also been in contact with the respondent.
- Mr. Bailey MOVED, Ms. Albers SECONDED to issue a Cease & Desist Order for future violations and a fine of \$250 per day if the property was not brought into compliance within 10 days of receipt of the Board's Order. MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

- A. Hearing Imposing Penalties
 - 1. 08-35956 - CODE COMPLIANCE OFFICER - RANDY WRIGHT
 - Respondent: Gulf Petroleum, Inc
 - Address of Violation: 10001 Tamiami Trail
 - Violation of Section 12-1, Occupational license; Section 7-32(A)(1), Failed to obtain a building permit; Section 26-17.5(C), Non-conforming signs.
 - Mr. Wright confirmed the subject property was located within City limits, requesting a dismissal as compliance was attained on February 24, 2009.
 - Mr. Bailey MOVED, Mr. MacGibbon SECONDED to dismiss Case #08-35956. MOTION CARRIED UNANIMOUSLY.

OTHER BUSINESS

Note: Item A.1. was heard following Item A, New Business.

- A. Request to Reconsider Order Imposing Penalty
 - 1. 09-36446 - CODE COMPLIANCE OFFICER - RANDY WRIGHT
 - Respondent: Douglas Joyce
 - Address of Violation: 1309 Casey Key Drive
 - Violation of Section 26-313(j), Parking of camping trailer.
 - City Attorney Levin expressed uncertainty with regard to why this case had been placed on the agenda other than the fact that the respondent, Mr. Douglas Joyce, had requested same. He then provided a brief review of this case as heard by the Board in March 2008 and January 2009, stating the Board imposed a fine at the latter meeting. He clarified the Board found the respondent to be in violation and assessed a fine in the amount of \$3,750. He mentioned his understanding was the respondent disputed the testimony presented at the January 2009 meeting, notice of which was served upon

the respondent who did not appear to defend himself at that time; however, he objected to such dispute being considered at this time. He explained a right of appeal from the January 28, 2009 meeting was the appropriate remedy for contesting facts; however, if the respondent was simply seeking a fine reduction, the Board had the ability to consider same. He concluded the question of guilt or innocence had already been determined, adding the only remedy available to the respondent in that regard was to appeal to the Circuit Court.

- Mr. Viola clarified the Board should not allow testimony outside of a request for a fine reduction.
- City Attorney Levin responded that was correct.
- Mr. Joyce stated in light of the City Attorney's comments, he wished to request a fine reduction to as low an amount as possible. He apologized for his absence at the January 28, 2009 meeting, stating he had been out of the country until January 25, 2009, and did not receive notice. He contended he had no knowledge of any violation or complaint until an acquaintance happened to mention it to him in passing on February 22, 2009. He stated he was accused of having a motor home, which was erroneous. He explained he had received a variance from the Board, specifically the former director, to purchase the motor home to accommodate his handicapped daughter's need for a bathroom facility. He displayed a letter indicating he had been granted a variance allowing use of the motor home for transportation but not human habitation as well as permission to maintain the vehicle at his home provided it was not converted to a vehicle for human habitation, confirming this was never done. He pointed out the motor home had been modified by removal of the kitchen unit and bedroom, adding it was simply a large van with a bathroom and a sink. He stated in 2003 he began to receive notice of numerous violations relative to his home with regard to trash and the subject vehicle, providing detailed descriptions of same. He noted he sought a continuation of the above mentioned variance; however, his request was denied by City Council. He acknowledged the vehicle exceeded the 19 foot restriction, albeit by very little; thus, he had stored the vehicle at the Charlotte RV Center since that denial and simply retrieved same when it was needed. He expressed frustration in that his neighbors complained each time the vehicle was parked in his driveway, asserting City Code allowed same from 7:00 a.m. to 7:00 p.m. He acknowledged times where the vehicle was parked in his driveway at 9:00 p.m.; however, he explained this was only for a short time to allow his daughter to disembark. He then stated he understood the problems began again in March 2008, at which time he believed his son had obtained the proper permitting from the City;

however, he acknowledged his error in that he had not confirmed same. He opined he was being singled out as there were several other recreational vehicles (RVs) in the neighborhood about which no complaints were filed. He asserted the Notice of Violation issued in March 2008 was provided to a contractor working on his home as opposed to himself. He maintained he was a prominent member of the community and thus should have been contacted either at his office or by telephone. He stated he had been unable to adjust his schedule to attend the earlier meetings. He then commented on Mr. Wright's testimony with regard to observing the vehicle in his driveway at 8:30 a.m. and his assumption that it had been parked overnight; however, he contended he had returned the vehicle to the Charlotte RV center on January 17, 2009, acknowledging he had not brought proof of same to this meeting. He opined there had been much miscommunication with regard to this situation.

- Mr. Schmidt interjected this was not the correct venue for an appeal of the Board's decision as stated initially by City Attorney Levin. He recommended Mr. Joyce seek allowance from City Council to maintain the vehicle at his property.
- Mr. Joyce reiterated his plea for as low a fine as possible, adding he also disagreed with the testimony which stated the RV was parked overnight in his driveway.
- Ms. Michelle Forsberg expressed concern with the notification process, stating the RV would have been brought to a storage location immediately if they had been made aware of the violation; however, the RV sat in the driveway for three weeks before the Notice of Violation was received and the \$3,750 fine imposed.
- Mr. Viola asked if Mr. Joyce had planned on leaving the RV in the driveway if he had not been made aware same was a violation.
- Mr. Joyce replied he had not but rather the RV was being used during the day. He reiterated he had been unaware of the complaints filed with the City.
- Mr. Viola interjected the respondent was fighting the case, which was contrary to City Attorney Levin's instruction.
- Mr. Stevens asked if Mr. Joyce received the Cease & Desist Order issued in March 2008.
- Mr. Joyce replied affirmatively.
- Ms. Albers commented it appeared there had been much communication by both parties, expressing concern with notice being served upon a contractor. She requested clarification from Mr. Wright with regard to the sequence of events.
- Mr. Wright reminded the Board Ms. Forsberg had just admitted the RV had remained in the driveway for three weeks. He stated Ms. Dawn Quinn and Mr. Michael Quinn, 1324 Casey Key Drive, were in attendance and wished to address the Board.
- Ms. Forsberg countered she had returned the RV to storage on January 17, 2009.

- Mr. Wright then submitted into the record a letter from Mr. Richard Begando, 1312 Casey Key Drive, attesting to the fact that Mr. Joyce's motor home was parked in his driveway for several weeks during November and December 2008 as well as January 2009.
- Mr. Joyce responded that was simply not correct.
- Ms. Forsberg reiterated she felt Mr. Wright should have contacted them personally as they would have complied immediately. She noted the vehicle had been used significantly over the holidays to accommodate their elderly parents and Mr. Joyce's handicapped daughter.
- City Attorney Levin announced testimony had exceeded that which was permissible. He reminded members the purpose of a fine was to gain the attention of the respondent, specifically to avoid violation of the March 2008 Order. He opined the Board had clearly gained Mr. Joyce's attention and certainly had the ability to reduce the fine if members so desired. He clarified determining guilt or innocence was not the purpose of this hearing. He mentioned whether or not the vehicle was occupied during the prohibited hours was not the issue.
- Mr. MacGibbon commented the fine was for \$250 per day for 15 days or \$3,750, stating Ms. Forsberg had disputed 4 of those days. He suggested a \$100 per day fine for 11 days or \$1,100.
- Mr. Viola stated he wished to see written proof from the Charlotte RV Center as referenced above by Mr. Joyce.
- Mr. Schmidt reiterated the only issue before the Board was consideration of a fine reduction.
- Ms. Albers countered the respondent had given sworn testimony which must be considered.
- Mr. Viola asserted he was satisfied Mr. Wright's testimony was truthful.
- Board Attorney John Polk interjected a factual dispute was not germane at this time but rather the Board could exercise their discretion to reduce the fine if they so desired.
- Mr. Joyce requested the fine be reduced, promising he would never park the vehicle in his driveway without first obtaining the proper permit.
- Mr. MacGibbon MOVED to reduce the fine to \$100/day for 11 days for a total of \$1,100.
- Ms. Albers asked if Mr. MacGibbon was basing his motion on the belief the vehicle had been parked in the driveway overnight for 11 days.
- Mr. Schmidt replied the motion was simply to reduce the fine.

- Mr. MacGibbon added he had deducted the four days which were in dispute from the original fifteen days established at the previous hearing.
- Mr. Bailey opined the Board should not consider the number of days but rather establish a flat fine.
- Mr. MacGibbon WITHDREW his MOTION.
- Mr. MacGibbon MOVED, Mr. Bailey SECONDED to reduce the fine to \$1,100.
- Ms. Albers reiterated it appeared there had been a great deal of miscommunication. She acknowledged the Board had been advised this was not the proper time to take testimony; however, the respondent had provided same, asking how the Board could consider fining the respondent when there was no proof the vehicle had been parked overnight.
- Mr. Bailey replied that was the basis for imposing a flat fine.
- Ms. Albers MOVED, Mr. Stevens SECONDED to AMEND the motion to reduce the fine to \$50 per day for 11 days or \$550.
- Mr. Meyer suggested the Board consider the situation in the same manner as other illegally parked vehicles and impose a fine of \$10 per day.
- Mr. Meyer MOVED to AMEND the AMENDMENT to fine the respondent \$10 per day for 15 days or \$150.
- MOTION DIED FOR LACK OF A SECOND.
- Mr. Schmidt called for a vote on the AMENDMENT to reduce the fine to \$550.
- VOTING AYE: Albers, Bailey, Stevens.
- VOTING NAY: MacGibbon, Meyer, Viola, Schmidt.
- AMENDED MOTION FAILED.
- Mr. Schmidt then called for a vote on the original motion.
- VOTING AYE: Bailey, MacGibbon, Stevens, Viola, Schmidt.
- VOTING NAY: Albers, Meyer.
- MOTION CARRIED.

Note: Member Comments were heard following Item A.

- B. Discussion of Penalties for Water Violations
- Discussed briefly under Member Comments.

MEMBER COMMENTS

- Mr. Viola commented on Case #09-36446, pointing out the Board had been provided with correspondence from Mr. Joyce's neighbor attesting to the fact that the RV had been parked in the driveway overnight for several weeks during November 2008, December 2008 and January 2009. He then read the letter into the record and

reminded members the Board had considered similar correspondence in the past during deliberation of other cases.

- Mr. Schmidt countered the letter did not state whether or not the proper permitting had been in place.
- Mr. Viola responded he believed that was inferred. He then expressed concern in that Mr. Wright's testimony was viewed with doubt, asserting he personally believed he could trust Mr. Wright's word.
- Mr. Wright added Mr. Quinn and Ms. Quinn had been prepared to attest to the fact that the RV had indeed been parked in Mr. Joyce's driveway overnight continuously.
- City Attorney Levin responded such testimony would have been appropriate at an evidentiary hearing.
- Mr. Stevens asked if an affidavit or statement from a neighbor carried any weight.
- City Attorney Levin replied same was considered hearsay evidence but could be used to support live testimony.
- Mr. Schmidt expressed approval of the Board's final action, pointing out Mr. Joyce had promised there would be no future violation.
- Ms. Perdomo countered Mr. Joyce had made the same promise the previous year.
- Ms. Albers asked if notice had been served to a contractor at Mr. Joyce's home.
- Ms. Perdomo explained she spoke with a contractor the previous year when she first opened the case; however, Mr. Joyce did receive the Notice of Hearing.
- Ms. Albers confirmed staff had never spoken with Mr. Joyce directly.
- Ms. Perdomo mentioned the case file included correspondence from Mr. Joyce in which he clearly admitted parking the RV in the driveway overnight.
- Ms. Lewis added numerous Courtesy Notices had been issued as well.
- Mr. Stevens then noted members had been provided with a statement of "Additional Phase III Water Restrictions" from the Southwest Florida Water Management District (SWFWMD), requesting an update regarding same.
- City Attorney Levin responded he had heard conflicting reports but would obtain a definitive answer. He explained the City may or may not be coming forward with a revised ordinance dependent upon confirmation of SWFWMD's action.
- Ms. Albers asked if City Council would be asked to approve new fine amounts.
- City Attorney Levin expressed uncertainty regarding same based on the above mentioned conflicting reports. He explained he had hoped the Board could consider defenses to alleged violations; however, he must first confirm SWFWMD's ruling. He clarified if SWFWMD made violations strict liability offenses, the Board would have no right to consider defenses.

ADJOURNMENT

- Meeting Adjourned: 10:14 a.m.

Heinz Schmidt, Chairman

Mary Kelly, Recording Secretary