

**CODE ENFORCEMENT BOARD
MEETING
JANUARY 27, 2010**

MEMBERS PRESENT: Jim Stevens, Chairman
Norman Ashworth, Tom Bailey, Richard Kresge,
Vic Poitras, Gloria Sepanik, Ed Viola

OTHERS PRESENT: Randy Wright, Maricela Perdomo, Dawn Lewis, Code Compliance Officers; David Levin, City Attorney; Teri Tubbs, Zoning Official; John Smith, Plans Examiner; David McCarty, Code Compliance Coordinator; Tom Walker, B. Gordon Johnston, Charles Dwyer, Russell Garrod, William Ambrose

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - February 24, 2010

APPROVAL OF MINUTES

- A. Meeting of December 23, 2009
 - Mr. Poitras MOVED, Mr. Viola SECONDED approval of the December 23, 2009 minutes. MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Kelly swore in all participants.
- A. 09-38357 - CODE COMPLIANCE OFFICER - RANDY WRIGHT
 - Respondent: James P. Quinn & Charlene Okomski
 - Address of Violation: 1101 Rum Cay Court
 - Violation of Chapter 7, Section 7-32(a)(1), Failure to obtain building permit for a fence; and Chapter 26, Section 26-8.11(c), Grass and/or weeds over 12 inches in height; and Chapter 20, Section 20-1(a), Mulch and plantings in the right-of-way; and Chapter 26, Section 26-8.11(b), Broken screen in the lanai of the property.
 - Mr. Stevens noted the respondents, Mr. James Quinn and Ms. Charlene Okomski, were not present, confirming there was no objection to entering pleas of not guilty on their behalf.
 - Mr. Randy Wright, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating on October 22, 2009, he observed a non-permitted fence had been erected in the rear yard which was not of the height required by City Code. He continued the fence was full of weeds, a broken screen existed in the lanai, and the front area was full of mulch, which impeded the flow of water. He announced he posted the property on November 25, 2009, at which time

there was no change in the violations. He reported as of December 18, 2009, the mulch had been removed from the area around the mailbox; however, all other violations remained. He advised a Notice of Hearing was issued and subsequently received on December 21, 2009, concluding there had been no change in the property's condition as of January 22, 2010.

- Mr. Stevens confirmed the home was occupied.
- Mr. Viola MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Viola commented the front yard did not appear to be too problematic; however, he agreed the fence area in the rear was unsightly due to all the weeds.
- Mr. Stevens asked if Mr. Wright had any direct contact with the respondents.
- Mr. Wright replied Mr. Quinn had contacted him approximately one month earlier to advise the mulch had been removed; however, there had been no further contact.
- Mr. Viola clarified the fence and weeds must be removed.
- City Attorney David Levin confirmed the violation relative to the mulch in the front yard had been rectified.
- Mr. Viola MOVED, Mr. Poitras SECONDED to find the respondents guilty, to issue a Cease & Desist Order for any future violations or be subject to a fine of up to \$250 per day and to require all violations to be eliminated within 5 days of receipt of the Board's order. MOTION CARRIED UNANIMOUSLY.

B. 09-38540 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO

Respondent: Mr. Olawale O. Idewu

Address of Violation: 103 West Marion Avenue

Violation of Chapter 17, Section 17.5(c), Non-conforming signs, change of use and ownership.

- Mr. Stevens noted the respondent, Mr. Olawale O. Idewu, was not present, confirming there was no objection to entering a plea of not guilty on his behalf.
- Ms. Maricela Perdomo, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating on November 17, 2009, she received a complaint regarding an electrical sign on the U.S. 41 side of the building. She explained the sign was considered non-conforming due to a change in use and ownership of the property. She continued the respondent was advised on May 19, 2009, to remove the electrical sign but failed to do so. She stated Mr. Idewu later informed Ms. Teri Tubbs, Zoning Official, of his intention to apply for a variance and was given ten days to submit the application for same. She noted on December 17, 2009, correspondence from the respondent was received indicating he had submitted

the application, at which time Mr. Idewu was advised the application fee must be paid before the variance process could continued. She mentioned at that time he also stated he would be out of the country but would address the issue upon his return on January 4, 2010. She concluded as of the previous day, January 26, 2010, the conditions had not changed nor had a variance application been submitted.

- Mr. Viola confirmed one of the photographs depicted the old sign.
- City Attorney Levin commented the electrical sign was not “on”, asking if same had any effect on its legality.
- Ms. Perdomo replied it did not per City Code.
- Mr. Ashworth asked if the previous owner held a permit for the sign.
- Ms. Tubbs interjected a sign permit was originally issued in 2001, adding City Council subsequently enacted an ordinance prohibiting electronic signs, at which time the sign became an existing, non-conformity. She continued City Code required removal of the sign immediately upon a change in ownership.
- Mr. Poitras asked when the sign was last illuminated.
- Ms. Perdomo estimated one to two weeks earlier.
- Mr. Ashworth MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Viola MOVED, Mr. Kresge SECONDED to find the respondent guilty, to issue a Cease & Desist Order for any future violations with a fine of up to \$250 per day and to require removal of the sign if a complete variance application, including the full application fee, was not received within 7 days of receipt of the Board’s Order or if the variance application was denied. MOTION CARRIED UNANIMOUSLY.

C. 09-36633 - CODE COMPLIANCE OFFICER - RANDY WRIGHT

Respondent: Mediterranean Landing Condominium Association, Inc.
c/o Ariana R. Fileman, Registered Agent

Address of Violation: 1323 Mediterranean Drive

Violation of Chapter 26, Section 26-3.13(e), Brick pavers abutting the entire length of the seawall; and Chapter 26, Section 26-8.13(a), Brick pavers are not an approved ground cover for drainage facilities.

- Mr. Stevens noted the respondent and registered agent, Ms. Ariana Fileman, was not present, confirming there was no objection to entering a plea of not guilty on her behalf.
- Mr. Wright requested a 30 day continuance as the respondent intended to submit a variance application, adding one of the owners met with staff recently with regard to a plan to perform repairs and bring the property into compliance.

- Mr. Kresge questioned the probability of a variance being granted.
- City Attorney Levin replied same would be based upon the evidence and testimony presented at that public hearing.
- Mr. Poitras asked if photographs of the violation were available.
- Mr. Wright replied affirmatively and displayed same, stating he believed the owners intended to remove the pavers and change the walkways.
- Ms. Tubbs added she had been advised of their intent to apply for a variance or perhaps install multiple, single sidewalks from the various residences down to the dock area, confirming same would be permitted by right. She explained the owners simply needed additional time to consider their options as this was a multi-tenant building.
- Ms. Sepanik questioned the length of time these conditions had existed.
- Ms. Tubbs replied she believed since 2006.
- Ms. Sepanik clarified a permit had not been obtained at that time.
- Mr. Viola MOVED, Mr. Ashworth SECONDED to continue Case #09-36633 to the Board's next meeting. MOTION CARRIED UNANIMOUSLY.

D. 09-37059 - CODE COMPLIANCE OFFICER - DAWN LEWIS

Respondent: David A. Graham & Susan E. Graham

Address of Violation: 210 Venezia Court

Violation of Chapter 26, Section 26-8.13(a-c), Improper ground cover in required drainage area; and Chapter 7, Section 7-32(a)(1), Construction of a fence without a valid building permit; and Chapter 26, Section 26-3.13(m), Installing a fence in a way not consistent with the requirements of this ordinance.

- Mr. Stevens noted the respondents, Mr. David Graham and Ms. Susan Graham, were not present, confirming there was no objection to entering pleas of not guilty on their behalf.
- Ms. Dawn Lewis, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating on July 13, 2009, she received a complaint concerning flagstones and a tarp being placed in the side yard. She noted she subsequently advised the homeowner the walkway must remain three feet from the property line, sod or mulch with planting could be placed in the area along the fence and the tarp must be removed, to which they agreed; however, as of August 10, 2009, the flagstone had been decreased in width but the tarp remained. She continued on October 19, 2009, a building permit was issued in error allowing a fence to encroach into the front yard by approximately 7 to 8 feet. She stated Ms. Tubbs informed the respondents of this error, adding they were also notified by certified mail on October

22, 2009. She reported as of November 25, 2009, the following conditions were observed: blue tarp on the ground in the side yard causing improper drainage; fence installed without a building permit; fence installed in a manner inconsistent with City Code requirements. She announced a Statement of Violation/Notice of Hearing was served upon the respondents on December 11, 2009, while the property was subsequently posted on December 15, 2009. She noted the respondents requested and were granted a continuance from the Board's November 2009 meeting. She concluded she observed partial compliance upon her January 21, 2010, re-inspection, adding as of this date, the fence and blue tarp had been removed while the mulching and planting was not complete. She mentioned she had discussed with the homeowners the possibility of extending the timeframe to March 15, 2010, to complete the planting and mulching in the side yard along the fence line.

- Mr. Viola MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Tom Walker stated he resided next to the subject property, adding blue tarp remained in place under the pavers. He questioned whether same was allowed by City Code.
- Ms. Tubbs replied a concrete sidewalk would be permitted to be poured within three feet of the property line, adding a tarp would be allowed under the paver sidewalk.
- Mr. Poitras commented the tarp may not have caused flooding if holes were punched through it to allow drainage.
- Ms. Lewis responded she believed drainage would still have been a problem.
- Mr. Poitras MOVED, Mr. Bailey SECONDED to find the respondents guilty, to issue a Cease & Desist Order for any future violations or be subject to a fine of up to \$250 per day and to require all violations to be eliminated by March 15, 2010, in light of current weather conditions. MOTION CARRIED UNANIMOUSLY.

E. 09-38638 - CODE COMPLIANCE OFFICER - RANDY WRIGHT

Respondent: Sylvia Ware Longmire

Address of Violation: 520 Ida Avenue

Violation of Chapter 26, Section 26-8.26, Portable on Demand (POD) storage unit in the side yard.

- Mr. Stevens noted the respondent, Ms. Sylvia Longmire, was not present, confirming there was no objection to entering a plea of not guilty on her behalf.
- Mr. Wright displayed several photographs of the subject property, located within City limits, stating on December 2, 2009, he observed a POD storage unit in the side yard. He announced a Statement of Violation/Notice of Hearing was issued on January 14,

2010; however, he stated he also posted the property as the certified mail had been returned unclaimed. He noted the POD remained on site as of January 25, 2010. He testified Ms. Longmire came into his office the previous day, January 26, 2010, and explained the POD was still in place as her brother had moved and had no other place to store his belongings; however, the respondent informed him the POD would be removed within 7 days.

- Mr. Kresge asked if Mr. Wright felt allowing the respondent a few additional days was appropriate.
- Mr. Wright replied affirmatively.
- Ms. Sepanik asked if Ms. Longmire had explained why she had waited such a long period of time before responding to Mr. Wright.
- Mr. Wright replied she had not.
- Mr. Viola MOVED, Mr. Bailey SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Kresge MOVED, Mr. Poitras SECONDED to find the respondent guilty, to issue a Cease & Desist Order for any future violations or be subject to a fine of up to \$250 per day and to require all violations to be eliminated within 14 days upon receipt of the Board's Order. MOTION CARRIED UNANIMOUSLY.

OLD BUSINESS

A. Hearings Imposing Penalties

1. 09-38260 - ZONING OFFICIAL - TERI TUBBS

Respondent: Linda-Louise (for the family Christian)

Address of Violation: 2543 Brazilia Court

Violation of Chapter 26, Section 26-3.13(m), Installing a fence in a way not consistent with the requirements of this ordinance; and Chapter 7, Section 7-32(a)(1), Construction of a fence without a valid building permit.

- Ms. Tubbs stated the Board had issued a Cease & Desist Order in this matter on December 23, 2009, requiring the portion of fence which encroached into the front yard to be removed as well as to obtain a building permit or to remove the fence in its entirety. She provided a brief review of members' discussions and actions, as delineated in their November and December 2009 minutes, stating the Board had ordered the respondent to comply within 7 days of receipt or posting of the Board's Order; however, her inspection of December 31, 2009, which was within 8 days of receipt, showed the fence remained in place and under the same conditions without being permitted. She confirmed there had been no change as of the previous day, January 26, 2010; thus, she recommended the Board impose a fine in the amount of

\$6,750, representing \$250 per day for 27 days of non-compliance from December 31, 2009, to January 26, 2010. She further recommended the fine continue to run until the property was brought into compliance.

- Mr. Viola asked if Ms. Tubbs had spoken with the respondent.
- Ms. Tubbs replied there had been no contact.
- Mr. Poitras commented he was troubled by the respondent's complete avoidance of this matter.
- Mr. Poitras MOVED, Mr. Viola SECONDED to impose a fine of \$6,750, representing \$250 per day for 27 days of non-compliance from December 31, 2009, to January 26, 2010, with such fine to continue to run until the property was brought into compliance with City Code. MOTION CARRIED UNANIMOUSLY.

2. 09-38379 - CODE COMPLIANCE OFFICERS - MARICELA PERDOMO & RANDY WRIGHT

Respondent: B. Gordon Johnston, Jr.

Address of Violation: 825 Via Tunis

Violation of Chapter 26, Section 26-8.11(e), Weeds over twelve (12) inches in height throughout landscaping; and Chapter 26, Section 26-8.11(g), Outside storage between bushes and throughout the property; and Chapter 26, Section 26-3.13(n), Trash cans stored outside of walled-in area.

- Mr. Stevens confirmed the respondent, Mr. B. Gordon Johnston, Jr., was present.
- Mr. Wright displayed photographs of the subject property, located within City limits, stating on December 2, 2009, Mr. Johnston received the Board's Orders which allowed 14 days to bring the property into compliance. He reported the property remained in violation as of December 22, 2009, adding the violations ran from December 17, 2009, to January 22, 2010. He concluded the violations remained as of the previous day, January 26, 2010, denoting same as follows: tall grass and weeds within all landscaped areas; outside storage between bushes and throughout the property; trash cans in the side yard; overgrowth throughout all landscaping. He noted other violations involving a blue tarp, bricks, bag of mulch, bag of salt, poles, wood, barrel, cage, ladder and black storage bin had been eliminated.
- City Attorney Levin asked when the displayed photographs were taken.
- Mr. Wright replied on or about November 25, 2009.
- City Attorney Levin questioned the date of Mr. Wright's most recent visit.
- Mr. Wright replied January 22, 2010.
- City Attorney Levin asked if the photographs fairly represented the conditions observed on January 22, 2010.
- Mr. Wright replied affirmatively, acknowledging some weeds had been cut.

- Mr. Johnston acknowledged Mr. Wright's testimony was basically true, stating he had taken care of the weeds. He mentioned one or two barrels remained in the yard between the bushes, explaining he left them in those locations for convenience when he performed yard work. He noted his physical condition limited his ability to work in the yard. He stated he had understood the barrels could be stored in that area, which he believed had been walled in at one time.
 - Mr. Ashworth asked the respondent if he performed all of his own property maintenance.
 - Mr. Johnston replied affirmatively, stating he could not work as quickly as he had in the past but did the best he could.
 - Mr. Poitras asked if hiring someone to perform the necessary yard work would impose a financial hardship.
 - Mr. Johnston replied it would.
 - Mr. Poitras commented the photographs indicated the required work did not appear to be light.
 - Mr. Johnston provided a brief description of what he planned to accomplish.
 - Mr. Viola pointed out the respondent could potentially face \$9,250 in fines.
 - Mr. Johnston responded he was unaware of same.
 - City Attorney Levin interjected the City's goal was to eliminate the visual blight affecting property values. He questioned whether the respondent could make a commitment, understanding his own limitations, to hire someone to perform the necessary work.
 - Mr. Kresge commented there appeared to be damage remaining from Hurricane Charley in August 2004.
 - Ms. Sepanik asked Mr. Johnston if he had family residing in the area.
 - Mr. Johnston replied he did not. He stated he performed his own yard work; however, it seemed he did not accomplish same in a timely manner.
 - Mr. Kresge MOVED, Mr. Ashworth SECONDED to continue Case #09-38379's penalty hearing to the Board's next meeting. MOTION CARRIED UNANIMOUSLY.
 - City Attorney Levin clarified a potential penalty had been running for 27 days and would continue to run until the Board's next hearing.
3. 10-38950 - CODE COMPLIANCE OFFICER - RANDY WRIGHT - REPEAT VIOLATION
 Respondent: Sylvia Ware Longmire
 Address of Repeat Violation: 520 Ida Avenue
 Violation of Chapter 9A, Section 9A-12(a), Outside storage of personal property.

- Mr. Wright stated the respondent had been provided with the Board's Order, adding the property had been out of compliance from December 2, 2009, to January 11, 2010, for a total of 41 days. He requested the Board impose a fine of \$1,025 or \$25 per day for 41 days of non-compliance.
- Mr. Ashworth observed this was the same property as the case involving a POD heard earlier in the meeting.
- Mr. Wright agreed; however, this was a separate case and different violation. He explained Ms. Longmire was a repeat violator.
- Ms. Sepanik confirmed the respondent was not present.
- Mr. Viola stated the photographs indicated the work needed was significant.
- Mr. Wright concurred, noting some violations had been eliminated; however, the property was in terrible condition.
- Mr. Bailey asked how staff communicated with Ms. Longmire.
- Mr. Wright replied primarily through written correspondence as the respondent typically would not answer a knock at the door. He further stated Ms. Longmire would rarely pick up any certified mail; thus, he was forced to post the property.
- Ms. Sepanik asked if the respondent had ever been fined in the past.
- Mr. Wright replied affirmatively, confirming no fines had ever been paid.
- Discussion ensued with regard to establishing contact with the property owner.
- Mr. Ashworth questioned the outcome of previously imposed fines.
- Mr. Wright explained liens had been filed against the property.
- City Attorney Levin clarified the remedies provided by the State Legislature in these types of situations were very limited. He noted the Board could order the City to enter and clean up the property; however, the City had no means of recouping those costs, resulting in further injury to the public at large. He mentioned because the property was homesteaded, any liens would not be satisfied until the property was sold. He cited a past case where staff had been authorized to seek an injunction on property where the owner refused to comply; however, it became clear the defendant in that case did not have or at least would claim he did not have the financial resources to have the work performed, notwithstanding a judicial order. He explained it became apparent the judge would not approve an injunction which could not be acted upon due to the limited resources of the respondent.
- Mr. Kresge suggested the City clean up the property as stated earlier.
- City Attorney Levin acknowledged the Board could issue that order; however, he expressed reluctance regarding same due to the City's limited financial resources as well as the potential for liability.

- Mr. Poitras expressed concern with regard to setting a precedent.
- Mr. Kresge MOVED, Ms. Sepanik SECONDED to impose a fine of \$1,025 for 41 days of non-compliance. MOTION CARRIED UNANIMOUSLY.

OTHER BUSINESS

A. Request For Fine Reduction

1. 08-34472 - PLANS EXAMINER - JOHN SMITH

Respondent: Charles and Kim Dwyer (new owners)

Address of Violation: 401 Belvedere Court

Violation of Chapter 7, Section 7-31(a), Additions, amendments and modifications to Building Code; and Chapter 7, Section 7-31(a)(1), Failure to obtain a building permit.

- City Attorney Levin drew members' attention to correspondence from the respondents, Mr. Charles Dwyer and Ms. Kim Dwyer, as delineated in the agenda material, requesting all fines imposed against this property prior to their ownership be eliminated either entirely or reduced to reflect actual costs.
- Mr. John Smith, Plans Examiner, stated he had been working with the current property owner for approximately ten months before bringing this matter to the attention of the Code Compliance Division. He explained a great deal of work had been done to bring the property into compliance, recommending the accumulated fines be reduced by half. He noted the total fine was currently \$42,400.
- Mr. Kresge asked if the property was in compliance.
- Mr. Smith replied affirmatively, reporting the addition constructed illegally had been removed. He continued Mr. Dwyer was currently in the process of rehabilitating the property, including a legal addition and installation of a pool.
- City Attorney Levin asked Mr. Smith to explain the rationale behind his recommendation.
- Mr. Smith replied the current owner had not caused the problem; thus, he could not see imposing the full fine. He acknowledged the owner had been aware of the issues associated with the property prior to purchasing same but was willing to work to bring the property into compliance.
- Ms. Sepanik questioned the amount of time between the respondents' purchase of the property and being brought into compliance.
- Mr. Dwyer replied he closed on the property in June 2009, stating the work performed since then was denoted in the Board's agenda material.
- Mr. Smith added the property was brought into compliance as of June 23, 2009.
- City Attorney Levin asked if the purchase price took into consideration the total fine amount.

- Mr. Dwyer replied the price took half of same into consideration.
- Mr. Poitras questioned the City's actual costs other than the fines.
- Mr. Smith estimated same at roughly \$10,000.
- Mr. Sepanik commented it appeared the respondent was exactly the type of homeowner needed in the City, specifically with regard to this type of property.
- Mr. Kresge MOVED, Mr. Bailey SECONDED to reduce the fine by half to \$21,200, the respondent to also be responsible for costs of recording the satisfaction of lien.
- Ms. Sepanik spoke in favor of reducing the fine even further to \$10,000.
- Mr. Bailey countered the respondent had only requested a 50% reduction.
- Mr. Viola clarified Mr. Smith believed \$10,000 would cover the City's costs.
- Mr. Ashworth expressed agreement with Ms. Sepanik's recommendation.
- Mr. Stevens interjected the agenda material detailed additional, administrative costs of \$116.73.
- Mr. Russell Garrod, respondent's contractor, mentioned Mr. Dwyer currently resided elsewhere in the City and was thus a taxpayer. He asserted numerous people had stopped at the property to express appreciation to Mr. Dwyer for all the work he had done on what was previously referred to as "one of the worst houses on the street."
- Ms. Sepanik MOVED to AMEND the motion to reduce the fine from \$21,200 to \$10,000, the respondent to also be responsible for costs of preparing and recording the satisfaction of lien and administrative costs of \$116.73.
- Mr. Poitras SECONDED the AMENDMENT.
- Mr. Bailey asserted he saw no reason to reduce the fine any further than that requested by the respondent and recommended by Mr. Smith.
- Mr. Stevens called for a vote on the AMENDMENT.
- VOTING AYE: Ashworth, Poitras, Sepanik, Viola.
- VOTING NAY: Bailey, Kresge, Stevens.
- MOTION CARRIED.

MEMBER COMMENTS

- Mr. Stevens welcomed Ms. Sepanik to the Board.
- Mr. Ashworth voiced concern regarding cases where the respondent may be physically unable to address certain violations, asking if staff had the authority to attempt to contact family members.
- City Attorney Levin replied affirmatively, noting staff did so whenever possible.
- Mr. Kresge noted local churches were sometimes able to provide assistance.
- Ms. Lewis concurred; however, the availability of support services had been negatively impacted by the current economy.

- Mr. William Ambrose then announced he had submitted his name for nomination to this Board, stating City Council would soon be voting on filling the Board's current alternate member vacancy.

ADJOURNMENT

- Meeting Adjourned: 10:32 a.m.

Jim Stevens, Chairman

Mary Kelly, Recording Secretary