

**CODE ENFORCEMENT BOARD
MEETING
JUNE 22, 2011**

MEMBERS PRESENT: Jim Stevens, Chairman
Norman Ashworth, Charles Council,
Vic Poitras, Gloria Sepanik, Ed Viola

MEMBERS ABSENT: Carol Perry

OTHERS PRESENT: Randy Wright, Maricela Perdomo, Code Compliance Officers; David Levin, City Attorney; Teri Tubbs, Zoning Official; David McCarty, Code Compliance Coordinator; Mark Draper, Timothy Coons, Dirk Catron

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
- 1. July 27, 2011

APPROVAL OF MINUTES

- A. Meeting of May 25, 2011
 - Mr. Poitras MOVED, Mr. Ashworth SECONDED approval of the May 25, 2011 minutes.
- MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Smith swore in all participants.
- Mr. Stevens provided a detailed review of hearing procedures, explaining the Board had no authority to change existing laws but rather was charged with enforcing same.
- A. 11-43514 - POLICE OFFICER - MELISSA REYNOLDS
 - Respondent: Itzy Louise Besgen
 - Address of Violation: Vacant lot across from 602 Vinca Rosea
 - Violation of Chapter 26, Section 26-3.13(i), Parking on vacant land.
 - Mr. Stevens announced the fine in this case had been paid.
- B. 11-43515 - POLICE OFFICER - MELISSA REYNOLDS
 - Respondent: Dunkin' Brands, Inc.
c/o Richard Besgen
 - Address of Violation: Vacant lot across from 602 Vinca Rosea
 - Violation of Chapter 26, Section 26-3.13(i), Parking on vacant land.
 - Mr. Stevens announced the fine had been paid in this case.

Note: Items C through H were heard following Item C, Unfinished Business.

C. 11-42624 – CODE COMPLIANCE OFFICER – RANDY WRIGHT

Respondent: Punta Gorda Corral, Inc.
d/b/a Golden Corral of Punta Gorda

Address of Violation: 1451 Tamiami Trail

Violation of Chapter 7, Section 7-32(a)(1), Failure to obtain permit; and Chapter 26, Section 26-7.4(a)(2)d,e, Building principles; and Chapter 26, Section 26-3.10(d)(e)(3), Prohibited structures.

- Mr. Randy Wright, Code Compliance Officer, requested a continuance to the Board's next meeting, explaining the respondent was moving forward with obtaining a permit. He confirmed plans had been submitted to the Zoning Division.
- Ms. Sepanik MOVED, Mr. Poitras SECONDED to continue Case #11-42624 to the Board's next meeting. MOTION CARRIED UNANIMOUSLY.

D. 11-43322 – CODE COMPLIANCE OFFICER – MARICELA PERDOMO

Respondent: Norman P. Robbins, Jr. & Deana S. Robbins

Address of Violation: 2410 Palm Tree Drive

Violation of Chapter 9A, Section 9A-12(d), Two unlicensed and inoperable vehicles parked and/or stored in the driveway.

- Mr. Stevens noted the respondents were not present, confirming there was no objection to entering a not guilty plea on their behalf.
- Ms. Maricela Perdomo, Code Compliance Officer, submitted into the record several photographs of the subject property, located within City limits, stating during a routine inspection on April 20, 2011, she observed two unlicensed vehicles. She mentioned both vehicles were parked in the driveway, one backed up almost abutting the garage. She noted she left a Courtesy Notice on the front door of the home requiring compliance within ten days; however, no corrective actions had been taken as of a May 4, 2011 re-inspection. She stated a Notice of Violation was issued and received by the respondent on May 6, 2011, requiring compliance within 5 days; however, the violations remained as of May 18, 2011. She announced an Affidavit of Violation/ Notice of Hearing was sent by certified mail but returned undelivered; thus, she hand delivered a notice on May 27, 2011, at which time the owner indicated one vehicle had been licensed and the other car would be donated. She concluded the violation remained as of June 21, 2011.
- Ms. Sepanik MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Poitras MOVED, Ms. Sepanik SECONDED to find the respondent guilty, to issue a Cease & Desist Order for any future violations and to require the property to be

brought into compliance within 14 days of receipt of the Order subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

E. 11-43395 – CODE COMPLIANCE OFFICER – RANDY WRIGHT

Respondent: Circle K Stores
Circle K Store #9771

Address of Violation: 3035 Tamiami Trail

Violation of Chapter 26, Section 26-13.2(b), Failure to obtain a Business Promotion permit; and Chapter 26, Section 26-13.2(a), Failure to obtain a Business Event permit.

- Mr. Wright requested this case be dismissed as the property was in compliance.
- Ms. Sepanik MOVED, Mr. Poitras SECONDED to dismiss Case #11-43395. MOTION CARRIED UNANIMOUSLY.

F. 11-43536 – CODE COMPLIANCE OFFICER – RANDY WRIGHT

Respondents: Federal National Mortgage Association
Shane Leone

Address of Violation: 520 Allen Street

Violation of Chapter 9A, Section 9A-12(a), Visual blight; and Chapter 26, Section 26-8.11(g), Outside storage.

- Mr. Stevens noted the respondent was not present, confirming there was no objection to entering a not guilty plea on their behalf.
- Mr. Wright displayed several photographs of the property, located within City limits, noting he inspected the property on May 17, 2011, and observed the following: couches, coolers, cabinets, trash bags, dog crate, coolers, broken bicycles, gas cans, car batteries, broken chairs and other miscellaneous items located in the front and rear of the property. He announced a Notice of Violation was issued and received by the respondent on May 23, 2011, requiring all violations to be eliminated within 5 days; however, as of his June 7, 2011, re-inspection, only a few items had been removed. He advised a Notice of Hearing was issued as well as posted on June 9, 2011. He concluded the violations remained as of June 21, 2011.
- Ms. Sepanik MOVED, Mr. Poitras SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Council requested clarification of the property's ownership.
- Mr. Wright replied Federal National Mortgage Association, confirming he had not been contacted by any representative.
- Ms. Sepanik MOVED, Mr. Council SECONDED to find the respondent guilty, to issue a Cease & Desist Order for any future violations and to require the property to be

brought into compliance within 14 days of receipt of the Order subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

G. 11-43429 – CODE COMPLIANCE OFFICER – MARICELA PERDOMO

Respondent: City Marketplace, LLC
Fifth Third Bank

Address of Violation: 89 Tamiami Trail & 115 Tamiami Trail

Violation of Chapter 26, Section 26-11.6(j), Prohibited signs; and Chapter 26, Section 26-17.5(a)(2), Non-conforming signs; and Chapter 26, Section 26-8.11(d), Broken concrete, broken curbing, broken electrical boxes, cracked asphalt and numerous potholes throughout the parking area; and Chapter 26, Section 26-8.11(e), Numerous dead trees, dead palm fronds on the palm trees and on the ground and dead landscape debris throughout the property; and Chapter 9A, Section 9A-12(a), Visual blight; and Chapter 9A, Section 9A-12(g), Debris and trash throughout the property.

- Mr. Stevens noted the respondents were not present, confirming there was no objection to entering a not guilty plea on their behalf.
- Ms. Perdomo submitted into the record several photographs of the subject property, located within City limits, stating she had responded to this property after receiving a complaint. She announced on May 4, 2011, she observed the following: broken concrete and curbing around landscape beds; cracked asphalt with potholes in numerous areas; dead trees and landscape beds; disregarded and unused electrical boxes, abandoned sign box; concrete; cans; other miscellaneous items. She advised a 14 day Notice of Violation was issued and received by both respondents on May 9, 2011, adding a June 9, 2011 re-inspection indicated the violations remained. She confirmed a Notice of Hearing was posted on June 10, 2011, and received by the respondents on June 13, 2011. She concluded all violations remained as of June 21, 2011. She mentioned a City Marketplace representative contacted her by telephone and advised the property was in foreclosure and they would not be taking any action.
- Mr. Council clarified the property was going through the foreclosure process.
- Ms. Sepanik MOVED, Mr. Council SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Ms. Sepanik confirmed Fifth Third Bank held the mortgage on the property.
- Mr. David Levin, City Attorney, reported Fifth Third Bank had not registered the property; therefore, there may be an additional violation presented in the future.
- Mr. Poitras inquired if this property was utilized by the City during events.
- Mr. Levin replied in the negative, adding event organizers had to obtain permission from the property owner to use that space for parking.

- Mr. Viola inquired if it was possible to prevent the site from being rented out due to its condition.
- Mr. Levin replied he did not believe they were renting it out at this time, and any use of the property was trespassing.
- Ms. Sepanik MOVED, Mr. Viola SECONDED to find the respondent guilty, to issue a Cease & Desist Order for any future violations and to require the property to be brought into compliance within 14 days of receipt of the Order subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.
- Discussion ensued with regard to the current status of the subject property.

UNFINISHED BUSINESS

Note: Item A was heard following Item B.

A. Request for Fine Reduction

10-41492 – ZONING OFFICIAL – TERI TUBBS

Respondent: Timothy T. Coons

Address of Violation: 420 West Olympia Avenue

Violation of Chapter 26, Section 26-6.3, Lot size; and Chapter 26, Section 26-3.7(g)(1)(2)(3)(4)(5)(6)(7), Development standards; and Chapter 26, Section 26-18.2(c)(e), Illegally subdivided lots.

- Ms. Teri Tubbs, Zoning Official, provided a detailed review of events surrounding this case, as delineated in the minutes of the Board’s April 2011 meeting, reminding members the Board had imposed a fine of \$17,250 on April 27, 2011. She stated Mr. Timothy Coons, respondent, had since confirmed with the Charlotte County Property Appraiser’s Office the subject property had been combined into one. She explained Mr. Coons had submitted a request for a fine reduction as he had purchased the property in good faith, adding he also indicated the seller had misrepresented the property. She stated it appeared the prior owner had executed a quit claim deed on the property from one entity he controlled to another. She concluded Mr. Coons had acted expediently but had run into certain “road blocks” with the Property Appraiser’s Office.
- Mr. Council clarified Ms. Tubbs felt Mr. Coons had been precluded from bringing the property into compliance due to actions or the lack thereof by the Property Appraiser’s Office.
- Ms. Tubbs concurred.
- Ms. Sepanik questioned the number of days between the time the Property Appraiser’s Office took necessary action and when the property was actually brought into compliance.

- Ms. Tubbs replied there had been a certain amount of additional delay as she had been out of town as of the Board's April 27, 2011 meeting, stating she most likely would have requested a continuance at that time, which would have avoided imposition of any fine whatsoever.
- Mr. Coons reiterated the registered real estate agent from whom he purchased the property had misrepresented same, adding he had initially been unable to rectify the situation. He clarified City staff had been extremely helpful. He confirmed he had filed suit against the seller as well as complaints with the Board of Realtors.
- Ms. Sepanik MOVED, Mr. Ashworth SECONDED to reduce the fine to \$0. MOTION CARRIED UNANIMOUSLY.

Note: Item B was heard following New Business.

B. Request for Fine Reduction

10-41812 - ZONING OFFICIAL - TERI TUBBS

Respondent: Branch Banking & Trust
Dirk Catron, Agent

Address of Violation: 33 Tamiami Trail

Violation of Chapter 9A, Section 9A-17, Failure to register a Distressed Real Property form.

- Ms. Tubbs provided a detailed review of actions taken by the Board at previous hearings, reminding members the Board had imposed a fine against Branch Banking & Trust (BB&T), respondent, at their May 25, 2011 meeting. She stated on June 8, 2011, Ms. Tracy Rollins, BB&T's attorney, informed her of their intention to address this matter, confirming receipt of correspondence, as delineated in the agenda material, from Mr. Dirk Catron, real estate agent. She explained Mr. Catron had requested an opportunity to seek a fine reduction, concluding the property had since been properly registered. She mentioned there had been no Code violation issues associated with the condition of the property.
- Mr. Levin questioned the fine amount previously imposed by the Board.
- Ms. Tubbs replied \$10,750.
- Mr. Council asked if prior notices had been sent to the correct address.
- Ms. Tubbs replied affirmatively, acknowledging correspondence had been sent to various BB&T addresses.
- Mr. Levin interjected the best evidence of who was representing BB&T was the attorney who was handling the foreclosure or the registered agent.
- Ms. Tubbs confirmed notice had been sent to the BB&T address listed on the mortgage itself.

- Mr. Levin advised all banks must identify their registered agent, adding that person, under law, was the appropriate party to receive these types of notices.
- Mr. Ashworth pointed out many notices had been mailed to various banks which had complied with this requirement of City Code, asking if BB&T had failed to register other properties.
- Ms. Tubbs expressed uncertainty regarding same, explaining she did not have that information in hand.
- Mr. Catron opined the City had done an excellent job with the information available; however, he did not believe legal notice had been given to the servicing division of the corporation. He pointed out BB&T was a 28,000 employee organization with over 1,850 locations, requesting the Board's lenience in light of same.
- Ms. Sepanik asked how Mr. Catron learned of the issues surrounding this property.
- Mr. Catron replied he was simply a Punta Gorda real estate agent which handled BB&T foreclosure properties from Nokomis to Cape Coral. He assured members BB&T was dedicated to maintaining the properties for which they were responsible.
- Ms. Tubbs confirmed Mr. Catron responded immediately once he was made aware of the situation.
- Discussion ensued with regard to the number of notices issued by the City and the locations to which they were mailed.
- Mr. Stevens questioned the amount of costs incurred by the City.
- Ms. Tubbs replied postage totaled \$84.
- Ms. Sepanik MOVED, Mr. Poitras SECONDED to reduce the existing fine of \$10,750 to \$5,084; upon payment, the City to issue a Satisfaction of Lien to be recorded by the respondent at their sole cost and expense; the respondent to submit payment within 14 days of entry of this Order; to reinstate the original fine amount of \$10,750 for failure to submit payment within 14 days and record a new lien against the property.
- Mr. Ashworth commended the City, pointing out the purpose of such fines was to gain the attention of indifferent respondents.
- Mr. Stevens expressed concern a \$5,000 fine would cause the case to linger in that he believed BB&T would appeal same.
- Mr. Levin countered such appeal would entail costs of a minimum of \$10,000.
- VOTING AYE: Ashworth, Council, Poitras, Sepanik.
- VOTING NAY: Viola, Stevens.
- MOTION CARRIED.

Note: Item C was heard following Item B, New Business.

C. 11-42793 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO

Respondents: National Employee Leasing Agents, Inc.
C2C Schools, LLC

Address of Violation: 115 West Olympia Avenue

Violation of Chapter 26, Section 26-17.5(c), Non-conforming sign – change of use; and Chapter 26, Section 26-11.2(g), Signs installed without obtaining a permit.

- Mr. Mark Draper, respondent's attorney, announced this case had been continued from the Board's previous meeting, providing a detailed review of testimony outlined in the Board's May 25, 2011 minutes. He noted the Board had granted a 30 day continuance to provide his client with time to rectify the situation with a sign contractor. He announced the sign contractor did apply for a permit which had been rejected, adding attempts to contact the individual had been unsuccessful. He reported the respondent had hired a new contractor who had contacted the City to indicate their intent to apply for a new sign permit, requesting an additional 60 days to resolve the matter.
- Mr. Council inquired as to the new sign contractor.
- Mr. Draper replied Signs-R-Us.
- Ms. Tubbs stated staff had been in touch with the contractor and anticipated the permit being issued in the near future.
- Mr. Draper opined his client was the victim of a crime, reiterating 60 days would be sufficient to resolve the matter.
- Mr. Council recalled a photograph displayed at the Board's previous meeting depicting an empty frame in the peak of the roof, asking if same had been removed.
- Ms. Perdomo replied it had not, displaying a photograph taken on June 21, 2011.
- Ms. Sepanik MOVED, Mr. Ashworth SECONDED to continue Case #11-42793 for 60 days. MOTION CARRIED UNANIMOUSLY.

Note: Item D was heard following Item A.

D. 10-40995 - CODE COMPLIANCE OFFICER - RANDY WRIGHT

Respondent: Celtic Ray Pub, LLC
c/o Kevin Doyle

Address of Violation: 145 East Marion Avenue

Violation of Chapter 26, Section 26-10.1, Pedestrian safety; and Chapter 26, Section 26-10.2(d), Parking area design; and Chapter 9A, Section 9A-9(g), Safety bollards not installed in the parking lot.

- Mr. Stevens noted the respondent was not present, confirming there was no objection to entering a not guilty plea on his behalf.
- Mr. Wright displayed several photographs of the property, located within City limits, noting on August 16, 2010, he observed safety bollards had not been installed in front

of the wheel stops in the parking lot. He announced a Notice of Violation was issued and received by the respondent on January 14, 2011, requiring all violations to be eliminated within 10 days; however, as of his April 27, 2011, re-inspection, the violations remained. He advised a Notice of Hearing was issued and received by the respondent on April 30, 2011. He reminded the Board this case had been continued from their May 25, 2011 meeting, concluding the bollards had not been installed as of June 21, 2011; however, a contractor had begun the permit application process the previous day, displaying a copy of same.

- Ms. Sepanik MOVED, Mr. Poitras SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Ashworth MOVED, Ms. Sepanik SECONDED to continue Case #10-40995 to the Board's next meeting to ensure the property was brought into compliance. MOTION CARRIED UNANIMOUSLY.

COMMITTEE/BOARD COMMENTS

- Mr. Poitras displayed a spreadsheet depicting various fine amounts, stating same would assist in avoiding delays during the Board's deliberations.
- Mr. Stevens recalled the Board had requested guidelines relative to Court costs, asking if same were available.
- Mr. Levin replied guidelines for some costs were already depicted within the City Code; however, staff would continue to work toward bringing forth a recommendation. He noted case law prohibited municipalities from seeking reimbursement of costs associated with salaries.
- Mr. Council asked if the same prohibition applied to contracted individuals such as the City Attorney.
- Mr. Levin replied he believed costs related to contracted individuals could be recouped; however, he opined it would not be cost effective for him to allocate the time necessary to determine the amount he should be paid in such an instance, adding he would not be in favor of recommending such practice.
- Mr. Poitras requested staff provide members with some sort of guideline relative to Court costs at their next meeting.

ADJOURNMENT

- Meeting Adjourned: 10:35 a.m.

Jim Stevens, Chairman

Karen Smith, Recording Secretary