

**CODE ENFORCEMENT BOARD
MEETING
AUGUST 24, 2011**

MEMBERS PRESENT: Jim Stevens, Chairman
Kate Albers, Charles Council, Herman Novak,
Carol Perry, Vic Poitras, Ed Viola

MEMBERS ABSENT: Norman Ashworth, Gloria Sepanik

OTHERS PRESENT: David Levin, City Attorney; Harvey Ayers, Katie Heck, Thomas Quegan,
Police Officers; Dawn Lewis, Randy Wright, Code Compliance Officers;
Teri Tubbs, Zoning Official; David McCarty, Code Compliance
Coordinator; Gregory Stevens

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting – September 28, 2011

APPROVAL OF MINUTES

- A. Meeting of July 27, 2011
 - Mr. Council MOVED, Mr. Viola SECONDED approval of the July 27, 2011 minutes.
MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- 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.
- Recording Secretary Kelly swore in all participants.
- A. 11-44101 – POLICE OFFICER – HARVEY AYERS
 - Respondent: Spazzi Italian Grill
c/o Anita Viteri
 - Address of Violation: 111 West Olympia Avenue
 - Violation of Chapter 15, Section 15-19 (b)(1)(3); and Chapter 15, Section 15-19(c)(1)a,
Appeal of false burglar alarm fee.
 - Mr. Stevens noted the respondent was not present, confirming there was no objection to entering a not guilty plea on their behalf.
 - City Attorney Levin announced this case was actually an appeal, requesting a dismissal of the appeal as the respondent was not present.
 - Mr. Council MOVED, Ms. Albers SECONDED to dismiss the respondent's appeal in Case #11-44101.
 - Mr. Poitras questioned the next step.
 - City Attorney Levin replied the respondent was required to pay the fee.

- MOTION CARRIED UNANIMOUSLY.

B. 11-44102 – POLICE OFFICER – BRANDON ANGELINI

Respondent: Spazzi Italian Grill
c/o Anita Viteri

Address of Violation: 111 West Olympia Avenue

Violation of Chapter 15, Section 15-19(b)(1)(3); and Chapter 15, Section 15-19(c)(1)a,
Appeal of false burglar alarm fee.

- Mr. Stevens noted the respondent was not present, confirming there was no objection to entering a not guilty plea on their behalf.
- City Attorney Levin announced this case was actually an appeal, requesting a dismissal of the appeal as the respondent was not present.
- Mr. Viola MOVED, Ms. Albers SECONDED to dismiss the respondent's appeal in Case #11-44102.
- Mr. Poitras questioned the frequency of false alarms at this address.
- Police Officer Harvey Ayers replied alarms were sounded at the subject address, located within City limits, on March 18, July 26, 10:05 p.m., July 27, 12:14 a.m., July 28, 9:25 a.m. and 10:43 p.m., July 29, 12:05 a.m., and July 30, 2011, 10:41 p.m. He advised the building was found to be secure at those times. He noted the respondent had cited City construction as being the cause of the frequency of false alarms; however, no construction had been underway with the exception of on July 28, 2011, at 9:25 a.m.
- MOTION CARRIED UNANIMOUSLY.

C. 11-44045 – POLICE OFFICER – KATIE HECK

Respondent: Gregory Don Stevens

Address of Violation: Right of way, Bal Harbor Boulevard/Appian Drive

Violation of Chapter 10, Section 10-8(h), Scrapping, refuse, garbage collecting.

- Mr. Gregory Stevens, respondent, entered a plea of not guilty.
- Police Officer Katie Heck displayed two photographs, as delineated in the agenda material, stating on July 19, 2011, at 1:30 a.m., she responded to the area of Appian Drive and Brenda Court, located within City limits, in response to a report of an individual scrapping. She announced as she reached the area, she encountered the respondent exiting the area in a green pick-up truck. She noted she continued on, subsequently issuing a warning to the individual identified in the above mentioned report. She advised Police Officer George Karaffa made contact with the respondent on the same evening and issued him a verbal warning for scrapping. She explained the respondent returned to the area approximately 25 minutes later and was again

informed scrapping was illegal in Punta Gorda. She stated the respondent indicated he was aware of same but became somewhat irate and informed her State paved roads in America were his God given right to drive on. She noted after continued argument from the respondent, she issued him a citation for scrapping.

- Ms. Albers MOVED, Mr. Poitras SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Gregory Stevens announced he had been the person who made the first report as stated by Officer Heck, confirming he understood scrapping was not allowed in the City. He explained he had been in the area to visit a friend who resided in the neighborhood and another who worked at the 7-Eleven store. He asserted all of the metal Officer Heck observed in his truck had been obtained in Port Charlotte, Florida. He contended there had been no evidence he had been scrapping in Punta Gorda, acknowledging he had become upset upon being issued a citation.
- Officer Heck stated based on past contacts with the respondent, he only visited his friend at the 7-Eleven store on nights where residents placed recyclables at the curb.
- Mr. Poitras asked if a record existed of the report made by the respondent.
- Officer Heck replied affirmatively.
- Mr. Council asked Officer Heck if she observed the respondent removing trash from the curbside.
- Officer Heck replied in the negative, specifically on the night in question.
- Ms. Perry asked Officer Heck if she had observed same on any other night.
- Officer Heck replied affirmatively, stating same was addressed under the following case.
- Mr. Council commented on the applicable ordinance, stating it appeared someone must be observed removing trash.
- City Attorney Levin argued the ordinance would be nearly impossible to effectuate if a requirement to catch scrappers "red handed" existed. He stated under the totality of the circumstances, i.e., the time of night, scrap visible in the respondent's vehicle, the night being one where trash was placed at the curb, presented sufficient evidence to show the ordinance had been violated. He clarified the ordinance was written so as to allow legitimate contractors to pick up this type of refuse. He advised circumstantial evidence was permissible, adding the Board must base their determination on the testimony found to be more credible. He submitted this was not a criminal case where guilt must be proven beyond a reasonable doubt, asking members to weigh the evidence based on the totality of same.
- Mr. Novak asked Officer Heck where she had stopped the respondent.

- Officer Heck replied the respondent had been pulling off of Brenda Court back onto Appian Drive.
 - Mr. Gregory Stevens asserted substantial evidence must still be presented. He pointed out areas of Charlotte County outside of City limits had the same trash night.
 - Officer Heck reiterated she had observed the respondent in the subject area only on trash nights.
 - Mr. Novak asked why the respondent felt he needed to ensure the other individual had left the area.
 - Mr. Gregory Stevens replied with uncertainty.
 - Ms. Albers MOVED, Mr. Viola SECONDED to find the respondent guilty, to issue a Cease & Desist Order and to impose a fine of \$25 plus \$30 Court costs. MOTION CARRIED UNANIMOUSLY.
- D. 11-44046 – POLICE OFFICER – THOMAS E. QUEGAN
- Respondent: Gregory Don Stevens
- Address of Violation: Right-of-way, Bal Harbor Boulevard/Albatross Drive
- Violation of Chapter 10, Section 10-8(h), Scrapping, refuse, garbage collecting.
- Mr. Gregory Stevens entered a plea of not guilty.
 - Police Officer Thomas Quegan announced the subject citation was issued after a July 26, 2011, 1:23 a.m. report by a resident about an individual who was removing scrap metal and other items from the right-of-way (ROW). He advised he subsequently made contact with the respondent whose vehicle was completely filled with scrap metal, adding the respondent informed him he was “driving around, looking for landscaping jobs.” He stated he questioned the respondent on same due to the time of night to which he responded it was his right to drive in the City. He noted the respondent neither denied nor admitted to scrapping in Punta Gorda. He explained he read the ordinance to the respondent, adding he had warned him several times in the past; however, based on the totality of circumstances and prior contacts, he issued a citation based on his investigation. He stated he suggested Mr. Stevens perform his scrapping in less restrictive areas; however, the respondent advised him Punta Gorda was the only area where he could make money. He noted the respondent also stated “they would have to build a wall around Punta Gorda Isles (PGI) to keep him out.”
 - Ms. Albers MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
 - Mr. Gregory Stevens advised he had simply been leaving the 7-Eleven at the time Officer Quegan first made contact with him, explaining he traveled down Bal Harbor Boulevard to Albatross Drive to gain access to U.S. 41.

- Ms. Albers interjected Albatross Drive did not intersect with U.S. 41.
- Mr. Gregory Stevens responded he had been on Via Tripoli.
- Officer Quegan interjected the easiest U.S. 41 access from the 7-Eleven was via Aqui Esta Drive.
- Mr. Gregory Stevens continued his testimony, stating Officer Quegan continued to follow him. He explained he subsequently pulled over as his engine began to overheat.

Note: Mr. Viola left the meeting at 9:36 a.m.

- Mr. Gregory Stevens stated Officer Quegan again detained him and accused him of loitering and prowling. He concluded the presence of scrap metal in his truck did not mean same was picked up in PGI.
- Mr. Novak questioned the frequency Officer Quegan encountered the respondent on nights other than trash nights.

Note: Mr. Viola returned to the meeting at 9:38 a.m.

- Officer Quegan replied very infrequently.
- Mr. Novak asked the respondent how often he traveled to Punta Gorda.
- Mr. Gregory Stevens replied almost daily.
- Ms. Perry asked if Officer Quegan had ever observed trash in the respondent's truck on non-trash nights.
- Officer Quegan replied he had not observed same.
- Mr. Gregory Stevens countered his truck always contained scrap metal.
- Mr. Poitras commented the respondent had prior contacts with the Police Department, the ordinance was read to him, several warnings were issued, and a citation for scrapping was issued one week prior, all of which made it very difficult to believe the respondent was not guilty.
- Mr. Poitras MOVED, Ms. Albers SECONDED to find the respondent guilty, to impose a fine of \$50 plus \$50 Court costs and to issue a Cease & Desist Order subject to a fine of \$500 for a subsequent offense. MOTION CARRIED UNANIMOUSLY.

Note: Upon the request of City Attorney Levin, Mr. Viola did not vote as he had stepped out of the meeting for a portion of the testimony.

E. 11-43789 - CODE COMPLIANCE OFFICER - DAWN LEWIS

Respondent: HSBC Bank USA, N.A.

Address of Violation: 910 Don Juan Court

Violation of Chapter 9A, Section 9A-17(f), Failure to submit a Distressed Real Property Registration form.

- Mr. Stevens noted the respondent was not present, confirming there was no objection to entering a not guilty plea on their behalf.

- Ms. Dawn Lewis, Code Compliance Officer, attested to her June 20, 2011, Affidavit of Violation and Notice of Hearing, as delineated in the agenda material. She further adopted the findings of fact presented in the aforementioned Affidavit as her testimony this date.
- Ms. Albers MOVED, Ms. Perry SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Council MOVED, Mr. Poitras 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 10 days of receipt of the Order subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

F. 11-43799 - CODE COMPLIANCE OFFICER - RANDY WRIGHT

Respondent: Morning Glorys, LLC

Address of Violation: 135 West Marion Avenue

Violation of Chapter 26, Section 26-8.11(c)(e)(f), Tall grass and/or weeds over 12 inches in height, dead landscape debris and overgrown landscaping; and Chapter 26, Section 26-8.11(g), Stacks of chairs stored outside.

- Mr. Stevens noted the respondent was not present, confirming there was no objection to entering a not guilty plea on their behalf.
- Mr. Randy Wright, Code Compliance Officer, requested a dismissal.
- Ms. Perry MOVED, Mr. Viola SECONDED to dismiss Case #11-43799.
- Ms. Albers asked if the property was in compliance.
- Mr. Wright replied affirmatively on a partial basis, explaining staff had only recently learned a portion of the property was owned by someone other than the respondent; thus, he would initiate a separate case for same.
- MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

A Hearing Imposing Penalty

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. Wright reported the property remained out of compliance with the Board's Order; thus, the violation had existed for 45 days.

- Mr. Council requested clarification of the subject property's ownership in that two respondents were identified.
- Mr. Wright explained Mr. Shane Leone rented the home while Federal National Mortgage Association was the owner.
- Mr. Council questioned the appropriateness of citing Mr. Leone.
- City Attorney Levin explained both respondents were indicated in the Board's original Cease & Desist Order, adding Mr. Leone had caused the violations. He clarified this situation was the same as in any landlord/tenant circumstance.
- Mr. Poitras MOVED, Ms. Albers SECONDED to find the respondents guilty of violation of the Board's Order and to impose a fine of \$4,500 for 45 days of non-compliance.
- VOTING AYE: Albers, Council, Novak, Poitras, Viola, Stevens.
- VOTING NAY: Perry.
- MOTION CARRIED.

MEMBER COMMENTS

- Mr. Poitras questioned the status of his request for a list of guidelines relative to Court costs.
- City Attorney Levin replied he would provide same as soon as possible.

ADJOURNMENT

- Meeting Adjourned: 10:12 a.m.

Jim Stevens, Chairman

Mary Kelly, Recording Secretary