

**CODE ENFORCEMENT BOARD
MEETING
OCTOBER 26, 2011**

MEMBERS PRESENT: Gloria Sepanik, Chairman
Norman Ashworth, Charles Council, Carol Perry,
Vic Poitras, Joyce Thompson, Ed Viola

OTHERS PRESENT: Rebecca Comtois, Police; David Levin, City Attorney; Teri Tubbs,
Zoning Official; Cody Vaughan-Birch, Board Attorney; Randy Wright,
Maricela Perdomo, Dawn Lewis, Code Compliance Officers; David
McCarty, Code Compliance Coordinator; Charles Wallace, Chris
McMillan

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting – November 15, 2011
- Ms. Sepanik welcomed Ms. Thompson, noting she was recently appointed to the Board by City Council. She reminded members the November and December 2011 meetings had been rescheduled to Tuesday, November 15, 2011, and Thursday, December 15, 2011, respectively, due to the holidays.

APPROVAL OF MINUTES

- A. Meeting of September 28, 2011
- Mr. Viola MOVED, Mr. Council SECONDED approval of the September 28, 2011 minutes. MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Smith swore in all participants.
- A. 11-44600 – POLICE OFFICER – REBECCA COMTOIS
Respondent: Jack’s Restaurant
c/o Charles Wallace
Sunloft, LLC
Address of Violation: 201 West Marion Avenue, #111
Violation of Chapter 15, Sections 15-19(b)(1)(3) and 15-19(c)(1)a, Appeal of False Burglar Alarm Fee.
- Mr. Charles Wallace, respondent, entered a plea of not guilty.
- Police Officer Rebecca Comtois stated on September 19, 2011, at approximately 1:28 a.m., she responded to an alarm call at the subject address, located within City limits, stating upon arrival the audible alarm was sounding. She advised she completed an exterior check of the building, observed nothing out of the ordinary, and the building

was secure. She stated no key holder responded, concluding she then cleared the scene with a disposition of unknown cause for the alarm.

- City Attorney Levin inquired whether there had been prior occasions of responding to this address specifically for false alarms.
- Officer Comtois replied affirmatively, specifically the Police Department had responded seven times since May 29, 2011; however, she advised she did not have specific dates in hand.
- City Attorney Levin asked if those alarms had been false.
- Officer Comtois replied she did not have that information in hand this date.
- Mr. Council interjected the basis for this action was multiple violations; however, the agenda material contained no information other than that related to the most recent violation.
- Mr. Poitras MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Wallace stated he was contesting only the most recent alarm, adding four of the alarms were tied to the same motion detector located in the kitchen. He noted many of the alarms were related to construction in the Sunloft Center. He explained Security Alarm Corporation (SAC) conducted an inspection of the alarm system after the first alarm and determined nothing was wrong; however, the technician had opined spiders were activating the motion sensors. He mentioned spiders were purported to be the main cause of false alarms. He confirmed an exterminator was retained but found no evidence of spiders. He continued after the third alarm, SAC suggested mice were triggering the alarm, stating a subsequent inspection by an exterminator again found no evidence of same. He stated after the fourth alarm, SAC reported dirt in the sensor, concluding that had been the cause from the beginning. He opined this was not mechanical failure but rather human error on the part of SAC, over which he had no control. He asserted every effort was made to correct the problem. He reiterated he was only disputing the last charge.
- Mr. Viola asked if there had been any subsequent false alarms.
- Mr. Wallace replied in the negative, specifically not since the sensor was replaced.
- Ms. Sepanik inquired if the respondent had documentation from SAC.
- Mr. Wallace replied affirmatively, submitting into the record a statement from SAC indicating the motion detector was failing and had been replaced.
- Mr. Poitras questioned the number of alarms which could potentially sound within Jack's Restaurant.

- Mr. Wallace replied 11 to 12, noting there were a number of doors. He apologized for the situation, reiterating this was human error.
- Mr. Ashworth clarified the most recent alarm was located in the kitchen.
- Mr. Poitras stated he had obtained a list of each of those violations, reading same into the record.
- Mr. Viola questioned the source of that information.
- Mr. Poitras replied the Police Department, noting same was public record.
- Mr. Viola questioned the total number of false alarms.
- Officer Comtois replied seven since May 29, 2011, noting an alarm had sounded on her way to this meeting.
- Mr. Wallace interjected he had not been contacted by SAC this date.
- Officer Comtois acknowledged she was unsure of the circumstances.
- Mr. Poitras inquired if Mr. Wallace had informed the alarm company about the fines, which totaled \$400.
- Mr. Wallace replied SAC would not take responsibility. He expressed reluctance to take legal action against SAC, pointing out the cost involved with same. He advised he had paid all previous fines.
- Ms. Thompson commented the sensor in the kitchen was likely to become dirty simply due to the significant amount of cooking and associated grease, asking if SAC had recommended replacing the sensor periodically.
- Mr. Wallace replied they did not, noting the sensor was closer to the preparation area.
- Mr. Poitras asked when City Code was amended to include a one year timeframe.
- Ms. Teri Tubbs, Zoning Official, replied May 18, 2011.
- Mr. Poitras clarified any subsequent alarms which sounded within the year timeframe would result in another fine.
- Mr. Wallace responded he would rather deactivate the system if the next false alarm resulted in a \$500 fine.
- Mr. Ashworth asked if Mr. Wallace or the building owner retained SAC.
- Mr. Wallace replied he did.
- Mr. Viola expressed uncertainty with regard to the number of alarms.
- Mr. Wallace reiterated he was disputing only one citation.
- City Attorney Levin agreed there was only one violation before the Board this date, explaining the question was whether or not there was a violation and whether there were mitigating circumstances as allowed under the ordinance.
- Ms. Perry MOVED to find the respondent violated City Code and to impose a fine of \$5, payment of which was due within 10 days.

- Board Attorney Cody Vaughan-Birch stated no testimony had been presented as to the specific number of alarms being contested. He noted City Council had provided the Board great discretion in these matters, adding mitigating circumstances were contemplated by the ordinance. He explained the Board had the discretion to consider mitigating circumstances which were not limited to electrical power failure interruptions, time changes, etc. He commented on the motion for a \$5 fine, urging the Board to follow the guidelines of the ordinance which provided certain dollar amounts.
- Mr. Poitras requested clarification of the responsible party, i.e., Mr. Wallace or SAC.
- Board Attorney Vaughan-Birch replied Mr. Wallace was responsible as he was the party occupying the property as well as appealing the fine. He pointed out the ordinance clearly stated a malfunction, regardless of the basis for same, still qualified as a false alarm and was a violation.
- Ms. Perry asked if the Board was required to impose a fine denoted within the ordinance if a finding of guilt was made.
- Board Attorney Vaughan-Birch spoke in opposition to selecting dollar amounts not contemplated by the ordinance itself, acknowledging City Council had given this Board a great deal of latitude,
- Mr. Wallace commented he had acted in good faith, stating circumstances had arisen which were out of his control.
- Ms. Perry WITHDREW her MOTION.
- Mr. Ashworth read a portion of Section 15 of City Code, opining Mr. Wallace should obtain documentation from SAC indicating their liability for the false alarm.
- Discussion ensued with regard to determining the responsible party and the definition of mitigating circumstances per City Code.
- Mr. Council MOVED, Mr. Viola SECONDED to grant the appeal based on mitigating circumstances as presented this date and to deny the violation. MOTION CARRIED UNANIMOUSLY.

B. 11-44197 – CODE COMPLIANCE OFFICER – RANDY WRIGHT

Respondent: Susan McMillan

Address of Violation: 541 East Virginia Avenue

Violation of Chapter 7, Section 7-32(a)(1), Shed placed on the property without a permit.

- Mr. Chris McMillan, respondent, entered a plea of not guilty.
- Mr. Randy Wright, Code Compliance Officer, displayed several photographs of the alleged violation, stating the subject property was located within City limits. He

announced on August 24, 2011, he determined a shed had been placed on this property without a proper permit; thus, a Notice of Violation was issued by certified mail and received by the respondent on August 29, 2011, requiring the respondent to secure a permit within 5 days of receipt. He continued the violation had not been corrected as of September 27, 2011, adding a Notice of Hearing was issued and the property posted on October 12, 2011. He summarized the shed remained on the property with no permit as of October 25, 2011; however, the respondent had submitted a permit application which had been rejected due to the shed's failure to meet required setbacks. He pointed out there was currently insufficient room to relocate the shed; however, the respondent had the option of combining the subject property with the adjacent parcel, which would allow the shed to be relocated so as to comply with City Code.

- Mr. Viola MOVED, Mr. Poitras SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Wright stated paperwork was in hand indicating the respondent's attempt to combined the properties as stated above.
- Ms. Sepanik asked if staff recommended a continuance so as to provide additional time.
- Mr. Wright replied affirmatively.
- Mr. McMillan announced the shed would be removed from the property on October 31, 2011, adding the company his tenant had hired was not licensed in the City. He advised his tenant would incur a significant monetary loss, asking if the City could take action against the company which had placed the shed.
- Ms. Sepanik replied same would be addressed via a different venue than through the Board. She advised the respondent to meet with a Code Compliance Division staff member.
- Mr. Council asked if the shed would still need to be moved once the properties were combined.
- Mr. McMillan replied affirmatively.
- Ms. Sepanik clarified a continuance to the next meeting date would be sufficient.
- Ms. Thompson asked if any drawings were submitted for the foundation when a permit application was filed.
- Mr. Wright replied it was not on a foundation but rather on runners; however, the company was required to submit a drawing to the Zoning Division indicating its exact placement.

- Mr. Poitras MOVED, Mr. Ashworth SECONDED to continue Case #11-44197 to November 15, 2011. MOTION CARRIED UNANIMOUSLY.
- C. REPEAT VIOLATION
- 11-44440 – CODE COMPLIANCE OFFICER – MARICELA PERDOMO (Repeat Violation)
- Respondent: Jeffrey C. Ogle
- Address of Violation: 1426 Sea Fan Drive
- Repeat Violation of Chapter 26, Section 26-8.11(c)(e)(f), Tall grass and/or weeds throughout the property, including landscaped areas.
- Ms. Maricela Perdomo, Code Compliance Officer, announced the respondent had requested a continuance to the next Board meeting.
 - Mr. Viola opined it was necessary to be firm with this respondent in that this was a repeat violation. He suggested the respondent be mandated to attend the next meeting.
 - Ms. Perdomo mentioned the respondent had requested the continuance in writing.
 - City Attorney Levin advised if the request for a continuance was granted, the respondent could be advised same was not automatic as well as that the Board had indicated their disinclination to grant another continuance at the next meeting.
 - Mr. Council stated he drove by the property, adding it appeared there had been some trimming recently.
 - Ms. Perdomo agreed the property had been cleaned up; however, there were still a few days where the property was in violation, adding the respondent understood he was in violation but wished to appeal the fine.
 - Ms. Perry MOVED, Mr. Viola SECONDED to continue Case #11-44440 to November 15, 2011. MOTION CARRIED UNANIMOUSLY.
- D. 11-44242 – CODE COMPLIANCE OFFICER – DAWN LEWIS
- Respondent: Residential Credit Solutions, Inc.
- Address of Violation: 2330 Via Veneto
- Violation of Chapter 9A, Section 9A-17(f), Failure to submit a Distressed Real Property Registration form.
- Ms. Sepanik 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 August 30, 2011, Affidavit of Violation and Notice of Hearing, as delineated in the agenda material, and further adopted the findings of fact presented in the aforementioned Affidavit as her testimony this date.

- Mr. Ashworth MOVED, Mr. Council SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Ashworth MOVED, Ms. Perry 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 7 days of receipt of the Board's Order subject to a fine of up to \$250 per day. MOTION UNANIMOUSLY CARRIED.

UNFINISHED BUSINESS

A. 11-44068 – CODE COMPLIANCE OFFICER – RANDY WRIGHT

Respondent: Eric L. Wetherington

Address of Violation: 1210 Lemon Street

Violation of Chapter 9A, Section 9A-12(d), Unlicensed vehicle parked/stored on the property; and Chapter 9A, Section 9A-12(a); and Chapter 26, Section 26-8.11(g), Outside storage.

- Mr. Wright requested a dismissal, stating all violations had been eliminated.
- Mr. Ashworth MOVED, Mr. Viola SECONDED to dismiss Case #11-44068. MOTION CARRIED UNANIMOUSLY.

MEMBER COMMENTS

- Mr. Poitras inquired if City Attorney Levin had made any progress on providing guidance on fees which the Board could impose.
- City Attorney Levin replied he had not but would continue to attempt to make progress.
- Mr. Ashworth asked who determined the Board Attorney's attendance was required.
- Board Attorney Vaughan-Birch replied State Statute prohibited the City Attorney from serving in the dual capacity of prosecuting cases and advising the Board, adding he was available upon the request of the Board.
- City Attorney Levin stated he made the recommendation relative to the Board Attorney's presence at this meeting based on the appeal submitted in Case #11-44600.
- Ms. Sepanik requested the Board Attorney be present at the next meeting as another appeal of a false alarm violation would be presented.
- Mr. Council suggested the City Attorney consult with the Chairman prior to requesting the Board Attorney's attendance.
- City Attorney Levin agreed.
- Mr. Poitras inquired as to the Board Attorney's fees.
- City Attorney Levin replied he was paid hourly.

ADJOURNMENT

- Meeting Adjourned: 10:17 a.m.

Gloria Sepanik, Chairman

Karen Smith, Recording Secretary