

**BUILDING BOARD
MEETING
NOVEMBER 14, 2011**

MEMBERS PRESENT: Mary Fleenor, Chairman
John Burrage, Thomas Cavanaugh, Peter Coccaro,
Erik Howard, Sean Howard, Keith Towles

OTHERS PRESENT: Randy Cole, Chief Building Official
Suzy Russell, Permit Supervisor
Cody Vaughan-Birch, Board Attorney
City Attorney David Levin
Wynn Whalen

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
- Ms. Fleenor announced the next scheduled meeting date was December 27, 2011; however, she confirmed the meeting would be cancelled or postponed due to the holidays.

APPROVAL OF MINUTES

- A. Meeting of August 23, 2011
- Mr. Cavanaugh commented at the Board's previous meeting, Mr. Mark Thurston had claimed the job for which he had not been paid was a State job which could not be liened nor bonded, expressing surprise regarding same. He questioned whether same represented normal circumstances for State jobs.
 - Mr. Towles commented he had understood bonding was required.
 - Mr. Erik Howard interjected bonding was typically at the applicable agency's discretion for jobs valued at \$100,000 or less.
 - Mr. Sean Howard opined State lands could not be liened.
 - Mr. Randy Cole, Building Official, agreed, stating he understood publicly owned property could not be liened.
 - Mr. Cody Vaughan-Birch, Board Attorney, expressed uncertainty regarding same, noting he would research the matter and report back to the Board.
 - Mr. Burrage MOVED, Mr. Cavanaugh SECONDED approval of the August 23, 2011 minutes. MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Kelly swore in all participants.
- A. Demolition Appeal – Bernice A. Rountree
 - Mr. Vaughan–Birch provided the Board with a detailed review of procedures for this type of case, confirming same would ensure the appellant was provided with due process. He mentioned the appeal procedure was addressed in Section 7–43 of the City Code. He reminded members hearsay evidence could be presented; however, the Board’s decision could not be based solely on same. He stated Ms. Fleenor had inquired regarding the possibility of the Board conducting a site visit, advising the Board against doing so but rather relying on the evidence and testimony presented this date.
 - Ms. Fleenor noted Ms. Bernice Rountree, appellant, was not present, asking how same affected the issue of hearsay.
 - Mr. Vaughan–Birch recommended the Board deal with the testimony presented as it was heard, pointing out there was no way to determine what would be presented, whether personal opinions or not. He explained any statements of fact should be based on an individual’s personal knowledge and belief. He clarified the Board must determine what weight to give any evidence and/or testimony as it was presented.
 - Mr. Burrage drew members’ attention to a written statement from Ms. Rountree, as delineated in the agenda material, some of which was quite contrary to the Building Official’s position. He expressed uncertainty with regard to how those differences would be resolved.
 - Mr. Vaughan–Birch commented Resolution #2870–10 governed quasi–judicial hearings, a section of which covered the rules of evidence. He then read a portion of Resolution #2870–10 into the record.
 - City Attorney David Levin announced his role was to act as staff’s advocate, expressing agreement with Mr. Vaughan–Birch’s direction with regard to evidence. He opined the appellant’s letter, as delineated in the agenda material, should not be considered as evidence but rather as a pleading. He suggested allowing staff to present their case first, explaining same would provide the appellant the opportunity to question the City’s statements.
 - Mr. Cole provided a brief review of his duties as Building Official at the request of City Attorney Levin. He announced he inspected the subject address, located within City limits, on December 9, 2010, and observed the exterior walls and roof were in need of major repair. He mentioned the home was damaged in Hurricane Charley in August 2004, adding the roof was covered with a tarp following same; however, the tarp became damaged after several years passed, which then exacerbated continued

deterioration. He stated Ms. Rountree was served a Notice of Unsafe Building on December 11, 2010, via certified mail, which required permits to be obtained within 20 days of receipt of same to either repair the unsafe building or to proceed with demolition. He noted on August 11, 2011, Mr. Randy Wright, Code Compliance Officer, inspected the structure and observed significantly greater damage to the exterior walls and roof, adding he then conducted his own inspection on that date. He reported the structure constituted an immediate hazard to life and to the public's safety. He continued a corrective order was issued to Ms. Rountree on August 16, 2011, which instructed her to obtain all necessary permits, demolish the structure and remove all debris within 30 days of receipt; however, Ms. Rountree failed to respond to such order. He stated on October 6, 2011, he hand delivered a Notice of Demolition to Ms. Rountree, adding she vacated the property within 7 days as ordered. He concluded on October 22, 2011, Ms. Rountree submitted this appeal.

- City Attorney Levin introduced a packet of numbered photographs of the subject property into the record as evidence.
- Ms. Wynn Whalen stated she was a cousin of Ms. Rountree, confirming she was representing the appellant, who was not physically able to appear; however, she announced Ms. Rountree was amenable to City representatives meeting with her at home. She confirmed she had no objection to the above mentioned photographs being submitted as evidence.
- Mr. Cole then displayed Photograph #1, stating same represented the west side of the structure where the carport was located. He mentioned all photographs were taken on October 21, 2011. He explained Photograph #1 depicted the significant amount of overgrowth adjacent to the structure. He continued the main electrical service panel was located in a room off of the carport, the roof of which was significantly damaged.
- Ms. Fleenor commented Ms. Rountree claimed there was no way the City could determine what, if any, damage had been done to the electrical panel, asking how Mr. Cole drew that conclusion.
- Mr. Cole replied he based same on exposure to the elements for seven years. He then displayed Photograph #2, explaining same was of the rear slope of the roof on the east corner of the house. He further noted a hole in the roof was also shown. He displayed Photograph #3, representing the collapsed gables which were completely unconnected to the roof and fully open to the weather. He continued Photograph #4 depicted overgrown weeds, trees and underbrush on the property; Photograph #5, rear portion of the above mentioned collapsed gable and detachment from the roof sheathing;

Photograph #6, close-up of the forward half of the same gable, clearly depicting a 20 square foot section open to the weather.

- Ms. Fleenor observed two pieces of wood in Photograph #6, questioning the purpose of same.
- Mr. Cole replied he believed they were temporary supports utilized to hold a tarp in place. He clarified the wood was not structural in any way.
- Mr. Burrage disclosed he had visited the property twice, offering to confirm Mr. Cole's testimony.
- City Attorney Levin countered he would not recommend same.
- Mr. Vaughan-Birch requested any procedural questions be directed toward himself.
- Mr. Cavanaugh observed what appeared to him to be a concrete beam in Photograph #6; however, he understood the home to be wood frame.
- Mr. Cole expressed uncertainty regarding same as the owner had not allowed him to inspect the interior of the home; however, certain exposed portions of the structure were wood frame. He suggested the home may have been constructed with a combination of materials. He then displayed Photograph #7, stating same was taken through the front window of the home and depicted moldy, fiberglass insulation hanging in the interior and the ceiling fully collapsed.
- City Attorney Levin asked if Ms. Rountree had been in the home at the time the photographs were taken and if she had been aware of same.
- Mr. Cole replied affirmatively to both questions.
- Ms. Fleenor confirmed exposed roof beams were visible above the hanging insulation.
- Mr. Cole agreed, noting daylight was visible behind same through the hole in the roof. He continued his review of the evidence, stating Photograph #8 depicted an overgrowth of weeds and underbrush; Photograph #9, interior with no ceiling remaining in place, missing gable, hole in the roof showing daylight, water damage as evidence by stained walls.
- Mr. Sean Howard asked if mildew or mold had formed along the rear wall.
- Mr. Cole replied he was unable to determine same as the home was dark inside. He reiterated the home had been in this condition for seven years, specifically without an enclosed roof. He continued Photograph #10 depicted the center front of the home.
- Ms. Fleenor pointed out what appeared to be a temporary repair, questioning the length of time same could be expected to remain effective. She noted Ms. Rountree's written statement expressed her intention to continue making repairs in the same general manner.

- Mr. Cole replied the actions taken by Ms. Rountree did not constitute repairs and were ineffective with regard to protecting the structure when applied in such a manner. He then stated Photograph #11 depicted the front corner of the carport, specifically the damage to the roof sheathing and structural portion of the roof; Photograph #12, dense overgrowth around the structure; Photograph #13, damage to roof and fascia adjacent to the front porch as a result of exposure to the elements, including water rot; Photograph #14, driveway which had heaved approximately 4 inches, prohibiting access to the property from the street by a vehicle; Photograph #15, front of the carport with two holes in the roof over same; Photograph #16, damaged roof. He clarified when it rained outside, it also rained inside the home. He displayed Photograph #17, depicting the Brazilian Pepper trees prior to their removal, explaining they had masked much of the damage to the home for a number of years. He then commented on the home's construction, stating same was a wood frame truss system. He explained over 50% of the walls were concrete block while the remainder was framed.
- City Attorney Levin then asked Mr. Cole to comment on the overall condition of the structure.
- Mr. Cole replied this was an unsafe, uninhabitable structure as defined by City Code, stating it had been open to the weather, vermin and rodents for at least seven years. He maintained the photographs attested to the fact that the electrical, mechanical and plumbing systems had all been compromised as had the interior of the home, specifically drywall, floor covering, contents, etc. He recommended the Board deny the appeal and affirm the demolition order.
- City Attorney Levin concluded the City had no additional testimony at this time, offering Mr. Cole for cross examination by the appellant.
- Mr. Burrage asked if Mr. Cole felt the structure could be salvaged.
- Mr. Cole replied he did not conduct an inspection of the interior; however, based on his years of experience in this field, the cost to repair same exceeded 50% of its value, adding the property was in a flood zone and would thus need to be raised.
- City Attorney Levin acknowledged anything could be accomplished for a price. He asked if the existing structure conformed to elevation requirements and standards of the Federal Emergency Management Agency (FEMA).
- Mr. Cole replied he could not answer same at this time, stating no permit applications had been submitted. He explained an elevation certificate would be required with such an application. He confirmed the home's construction pre-dated the City's flood ordinance, adding he believed the structure was in violation of same. He reiterated the

structure was unsafe and a hazard to the public as well as to anyone occupying same. He mentioned water service to the home had been shut off at the owner's request, explaining prior to same, water usage had risen from 500 gallons per month to 68,000 gallons per month. He attributed this activity to damaged, defective plumbing.

- Mr. Burrage asked if electrical service had been shut off as well.
- Mr. Cole replied he did not believe so.
- Mr. Burrage opined active electrical service could present a hazard.
- City Attorney Levin then confirmed neither the Board nor the appellant had an objection to the photographs being submitted into evidence.
- Ms. Whalen then stated her agenda packet did not include Photographs #9, #10, #14, #15 and #16.
- Mr. Cole responded he would provide Ms. Whalen with same.
- Ms. Whalen stated no one other than Ms. Rountree had been inside the home; thus, there was no way to determine the amount of interior damage. She noted Ms. Rountree felt there were only two rooms which had incurred damage, the living room and a back bedroom, adding the appellant's reaction to same was to simply close the doors to those rooms. She advised Ms. Rountree did not wish to lose the home, acknowledging the significant amount of time which had elapsed since it was first damaged. She explained a roofing contractor visited the site but had been unable to even provide an estimate due to the horrible odor emanating from same. She stated Ms. Rountree would not allow anyone access to the home, including herself, adding she would be considered a "hoarder."
- Ms. Fleenor questioned the method by which Ms. Rountree accessed the home.
- Ms. Whalen replied via a very narrow path into the kitchen and the family room, the latter being the area in which Ms. Rountree lived. She reiterated the damaged rooms did not exist for Ms. Rountree once their doors were closed.
- Ms. Fleenor asked if Ms. Whalen felt same was reasonable.
- Ms. Whalen replied she did not; however, she stated she would take every action possible in order to represent Ms. Rountree's interests.
- Mr. Sean Howard clarified Ms. Rountree currently resided in another home located behind the subject structure.
- Ms. Fleenor opined the structure was indeed a hazard not only to the public but to the appellant as well.
- Ms. Whalen responded Ms. Rountree's response would simply be "that's her business."
- Mr. Burrage reiterated he had personally viewed the property, stating doing nothing was not an option.

- Ms. Whalen agreed. She reported Ms. Rountree had recently confirmed her intention to have a new roof installed if the home could be saved.
- Mr. Sean Howard interjected a new roof would be insufficient but rather an entirely new roof system would be required.
- Mr. Burrage estimated repairs at \$75,000 to \$100,000, asking if the appellant was prepared to expend such an amount.
- Ms. Whalen expressed uncertainty regarding same.
- Mr. Burrage mentioned he had personally seen an infestation of rats in and around the home.
- Mr. Sean Howard asserted the property presented multiple safety concerns, pointing out the existing roof system could be lost in a light tropical storm event. He maintained the potential for an electrical fire was significant which in turn endangered firefighters and other emergency personnel.
- Ms. Whalen opined Ms. Rountree would appeal the Board's decision if the City's intention to demolish was upheld.
- Mr. Erik Howard asked Ms. Whalen what action she believed Ms. Rountree was prepared to take.
- Ms. Rountree replied she believed the appellant would be willing only to replace the roof.
- Mr. Cavanaugh disclosed he had visited the property and spoken briefly with Ms. Rountree about the need for a new roof. He continued Ms. Rountree had informed him she had contacted a roofing contractor, Dr. Good Roof, with regard to obtaining a cost estimate; however, Ms. Rountree advised she had not received a response from the contractor. He continued he then contacted Dr. Good Roof, who provided him with a copy of the appellant's proposal which was for partial repairs to the roof at a cost of \$2,100. He explained Dr. Good Roof further stated Ms. Rountree had requested an estimate for partial repairs only.
- Ms. Whalen interjected that estimate was for another property owned by Ms. Rountree.
- Mr. Cavanaugh countered the written estimate referenced a job location of 322 East William Street.
- Ms. Whalen reiterated her belief the estimate was for the other location, acknowledging Ms. Rountree expressed resistance to that as well.
- Mr. Coccaro asked if the Board should allow Ms. Whalen to present the appellant's case prior to questioning her.

- Mr. Vaughan–Birch replied there was no set process which prohibited members from questioning Ms. Whalen. He clarified the Board must simply ensure the appellant was afforded a full opportunity to be heard.
- City Attorney Levin asked if Ms. Whalen had been aware of prior attempts on the part of the City to assist Ms. Rountree, well before coming to this point.
- Ms. Whalen replied only after accessing such information on the City’s website.
- City Attorney Levin asked if Ms. Whalen was aware those offers went unanswered.
- Ms. Whalen replied affirmatively.
- City Attorney Levin asked if Ms. Whalen was aware the City had contacted local, civic organizations to generate volunteer efforts to repair the structure, such offers having been refused by Ms. Rountree.
- Ms. Whalen replied she had not.
- City Attorney Levin referenced Photograph #9, asking Ms. Whalen if she believed anyone residing within a structure which had incurred such damage would be safe.
- Ms. Whalen replied she did not, specifically in that portion of the home.
- City Attorney Levin cited an example of Ms. Rountree being in that portion of the home during a storm event, asking if Ms. Whalen would feel the City had shirked its duty by not having taken any action prior to same.
- Ms. Whalen replied she would not blame anyone for consequences incurred as a result of Ms. Rountree’s actions or lack thereof.
- City Attorney Levin questioned Ms. Rountree’s feelings in the event a portion of the roof resulted in injury or damage to someone on a nearby property.
- Ms. Whalen replied she believed Ms. Rountree would be very upset.
- City Attorney Levin asked what action, if any, could be taken to ensure the public’s safety other than through demolition of the structure.
- Ms. Whalen replied she did not believe same was possible in light of the home’s current condition.
- Ms. Fleenor expressed surprise the property was not cited under Chapter 9A, Public Nuisances.
- City Attorney Levin responded a number of potential remedies were available for this situation, which itself was comprised of several, different conditions. He clarified City Code allowed the Code Compliance Division to address a specific condition which posed a threat not only to the occupant but to members of the general public as well. He concluded staff believed this situation was best treated under the existing, unsafe building ordinance.

- Ms. Fleenor reminded Ms. Whalen of the potential for additional fines, levies, costs, etc., if the City had opted to cite the property under Chapter 9A.
- Ms. Whalen mentioned Ms. Rountree had trimmed back the vines and other overgrowth; however, she enjoyed the flowers which bloomed on the vines, thus the reason behind allowing them to grow in an untrimmed manner. She pointed out Ms. Rountree also trimmed the grass by hand with scissors so as not to destroy the wildflowers.
- City Attorney Levin commented City Code contained a section related to overgrowth of vegetation, stating staff had provided Ms. Rountree with copies of same during earlier efforts by the Code Compliance Division. He confirmed Ms. Rountree had eliminated the violations related to overgrowth of vegetation; however, removal of same had revealed even more of the scope of the damage to the structure. He reminded Ms. Whalen the City had determined the home to be an unsafe structure.
- Ms. Whalen acknowledged her awareness of same.
- Mr. Erik Howard confirmed the property was currently owned by the appellant, asking if she was the sole owner.
- Ms. Whalen replied affirmatively.
- Mr. Erik Howard asked to whom the property would be transferred upon Ms. Rountree's demise.
- Ms. Whalen expressed uncertainty regarding same, confirming no will existed.
- Mr. Burrage confirmed Ms. Whalen had visited the property, asking if she believed it was salvageable.
- Ms. Whalen replied affirmatively, provided Ms. Rountree's comments relative to the property were true.
- Mr. Sean Howard asked if Ms. Whalen was aware of the 50% rule.
- Ms. Whalen replied affirmatively.
- Mr. Sean Howard maintained the subject property would definitely fall under that rule.
- Ms. Whalen agreed, albeit only if taking into consideration the electrical and plumbing work. She explained the only problem currently facing Ms. Rountree was the roof.
- Ms. Fleenor reminded Ms. Whalen of the unexplained, sudden increase in water usage from 500 to 68,000 gallons per month.
- Ms. Whalen responded Ms. Rountree agreed to shut off the water before she had the opportunity to locate the source of the leak; thus, the leak could be related to a malfunctioning toilet or sink.

- Mr. Cole stated knowing or suspecting the extent of the damage to the structure, he would be unable to simply issue a roof permit until all other concerns had been addressed.
- Ms. Whalen expressed her belief roof repair would need to be accomplished before any other repairs were even considered.
- Ms. Fleenor disagreed, stating the structure below the roof would first need to be evaluated.
- Mr. Cole noted he would initially need to see permitting to address all concern, explaining the home would first need to be inspected by a structural engineer who in turn would denote recommendations. He continued electrical, mechanical and plumbing systems would also require inspection, adding Ms. Rountree would also be required to allow him to inspect the interior of the home so as to allow him to assess any potential damage, i.e., mold, mildew and/or any unsafe conditions. He asserted the home was not safe for human habitation per City Code, adding he could not allow the situation to continue to exist once he was made aware of the conditions.
- Mr. Towles asked if all new windows and doors would be required if damage exceeded the 50% rule.
- Ms. Whalen interjected any action would be pointless if the 50% rule was exceeded.
- Mr. Towles agreed with Mr. Burrage's earlier statement with regard to costs estimated at \$100,000.
- Ms. Whalen questioned the value of the home.
- Mr. Sean Howard replied the Charlotte County Property Appraiser's Office valued the property at \$101,981.
- Mr. Towles contended the cost for the work necessary to raise the home to habitable condition would far exceed 50% of that figure.
- Ms. Whalen clarified she did not disagree with the issues raised by the Board.
- City Attorney Levin displayed a portion of Section 7-39 of the City Code, noting same defined an unsafe building for the purposes of this type of proceeding. He pointed out 11 conditions of an "unsafe building" were listed, asking Mr. Cole to identify those that applied in this case.
- Mr. Cole replied Conditions #3, #4, #5, #6, #7, #8, #9 and #10, providing a brief explanation of the basis for his determinations.
- City Attorney Levin commented the absence of water service alone resulted in unsanitary conditions.
- Mr. Burrage confirmed only one of those conditions must be met in order for a building to be determined unsafe.

- Ms. Fleenor concluded there were no other questions or concerns.
- Mr. Erik Howard MOVED, Mr. Coccaro to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Burrage MOVED, Mr. Towles SECONDED based on the competent and substantial evidence presented this date by the Building Official as well as review with the appellant's representative, to find the Building Official had fulfilled his obligation and to uphold the decision to demolish the structure. MOTION CARRIED UNANIMOUSLY.
- City Attorney Levin then stated City Council had directed him to draft an amendment to City Code as same related to the City's false alarm ordinance and the penalties associated with same. He provided a detailed review of the current ordinance and the responsibilities of the Code Enforcement Board (CEB) when an appeal was submitted. He explained the amendment, if adopted, would empower this Board, which perhaps had a greater degree of knowledge relative to mechanical operations, to determine the validity of submitted appeals, i.e., mitigating circumstances, but leave the penalty portion with the CEB.
- Mr. Sean Howard asked if this Board would be able to render an opinion on the proposed amendment.
- City Attorney Levin replied he believed same would be helpful.
- Mr. Sean Howard explained he did not see how the proposal was relevant to the Board's authority.
- City Attorney Levin replied it would be made relevant through an ordinance change, adding City Council had the power to provide the Board with the necessary authority.
- Mr. Sean Howard suggested perhaps one member of the CEB could be required to have experience and knowledge in the appropriate area, stating same could be accomplished at the time of the next change in membership.
- Ms. Fleenor commented there were not always specific experts in particular fields available for appointment to the City's advisory boards.
- City Attorney Levin added he did not believe the City Council would expand the CEB to include an additional member only for that particular specialty. He then provided various examples of the basis for appeals such as insect activity or power surges.
- Discussion ensued with regard to the responsibilities of the CEB and this Board as same related to the proposed false alarm ordinance amendment.
- Ms. Fleenor requested an opportunity to review the draft ordinance before accepting the proposed responsibility.
- City Attorney Levin responded affirmatively, stating he would provide same as soon as a draft was prepared and available for review.

UNFINISHED BUSINESS

- A. Joshua W. Campbell – Probation Requirement
- Ms. Suzy Russell, Permit Supervisor, announced on May 24, 2011, the Board granted Mr. Joshua Campbell's appeal to renew his Certificate of Competency (COC). She noted Mr. Campbell was placed on probation for two years and was required to appear before the Board every six months during that time. She confirmed Mr. Campbell was not present, adding he was properly served notice for this meeting; thus, he was in violation of his probation due to his failure to appear this date. She confirmed Mr. Campbell had not contacted her.
 - Mr. Cole confirmed Mr. Campbell's COC had been renewed in August 2011, prior to being required to appear this date. He advised staff's recommendation was to revoke Mr. Campbell's COC.
 - Mr. Vaughan-Birch commented the six month period from the May 24, 2011 hearing technically did not expire until November 24, 2011; thus, he suggested the Board continue this case.
 - Mr. Coccaro MOVED, Mr. Burrage SECONDED to continue this case to the Board's January 2012 meeting. MOTION CARRIED UNANIMOUSLY.

STAFF COMMENTS

- Mr. Cole commented on the false alarm issue as discussed earlier, stating the Board would only hear appeals or "excuses." He explained the City's goal was to stop multiple false alarms. He then reminded members of their recommendation for stickers to identify licensed contractors in the City during an emergency event, confirming he was still working on same.
- Mr. Coccaro asked if staff researched unlicensed building activity on weekends.
- Mr. Cole replied in the negative other than through observations by Code Compliance Officers for four hours on Saturday mornings.
- Discussion ensued with regard to unlicensed building activity and possible remedies.
- Mr. Cole urged members to inform him of same, stating he would certainly follow up.

ADJOURNMENT

- Meeting Adjourned: 11:28 a.m.

Mary Fleenor, Chairman

Mary Kelly, Recording Secretary