

**CODE ENFORCEMENT BOARD  
MEETING  
APRIL 22, 2009**

**MEMBERS PRESENT:** Heinz Schmidt, Chairman  
Kate Albers, Tom Bailey, Richard Kresge,  
Paul Meyer, Jim Stevens, Ed Viola

**OTHERS PRESENT:** Randy Wright, Dawn Lewis, Maricela Perdomo, Code Compliance Officers; David Levin, City Attorney; John Polk, Board Secretary; Donyl Yates, Board Secretary; Herbert Bosch, Rafael Mirabal

**CALL TO ORDER/ANNOUNCEMENTS**

- A. Roll Call
- B. Next Scheduled Meeting - May 27, 2009

**APPROVAL OF MINUTES**

- A. Meeting of March 25, 2009
  - Mr. Meyer MOVED, Mr. Viola SECONDED approval of the March 25, 2009 minutes. MOTION CARRIED UNANIMOUSLY.

**NEW BUSINESS**

- Recording Secretary Kelly swore in all participants.

**Note: Item A, Unfinished Business, was heard prior to Item A, New Business.**

- A. 09-36624 - CODE COMPLIANCE OFFICER - RANDY WRIGHT

Respondent: Peter L. Alessandroni

Address of Violation: 1001 Bal Harbor Boulevard

Violation of Section 26-8.11(b)(c)(e)(f), Property maintenance.

- Mr. Randy Wright, Code Compliance Officer, displayed several photographs of the subject property located within City limits, stating on February 23 2009, he observed tall grass within the landscaping, several overgrown trees and hedges, damaged soffit and fascia on the side of the home, an overgrown entryway and several untrimmed trees in the rear of the property. He acknowledged some work had been completed; however, progress had been slow.
- Mr. Schmidt confirmed the respondent was not present.
- Ms. Albers MOVED, Mr. Stevens SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
- Mr. Meyer MOVED, Mr. Bailey SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.

- Mr. Meyer MOVED, Mr. Viola SECONDED to issue a Cease & Desist Order requiring all violations to be eliminated within 10 days of receipt of the Board's Order or be subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.
- B. 09-36863 - CODE COMPLIANCE OFFICER - RANDY WRIGHT
- Respondent: Cellular Sales of North FL LLC.  
Address of Violation: 900 Tamiami Trail  
Violation of Section 12-1, Imposition of Business tax.
- Mr. Schmidt confirmed the respondent was not present.
  - Ms. Albers MOVED, Mr. Stevens SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
  - Mr. Wright stated on March 25, 2009, he had informed the manager of this business of his failure to pay the required Local Business Tax (LBT). He noted the manager did not submit the necessary paperwork nor had the LBT been paid. He announced a Statement of Violation/Notice of Hearing was served by certified mail. He concluded the LBT had not been paid as of April 21, 2009.
  - Mr. Viola MOVED, Mr. Bailey SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
  - Mr. Viola MOVED, Mr. Meyer SECONDED to issue a Cease & Desist Order and require payment of the required LBT within 5 days of receipt of the Board's Order or be subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.
- C. 09-36359 - CODE COMPLIANCE OFFICER - DAWN LEWIS
- Respondent: Krishnaswamy and S. K. Gajaraj  
Address of Violation: 827 Bal Harbor Boulevard  
Violation of Section 26-8.11(c)(e)(f), Property maintenance.
- Mr. Schmidt confirmed the respondents were not present.
  - Mr. Meyer MOVED, Ms. Albers SECONDED to enter not guilty pleas on behalf of the respondents. MOTION CARRIED UNANIMOUSLY.
  - Ms. Dawn Lewis, Code Compliance Officer, stated on January 7, 2009, she observed tall grass and weeds, overgrown landscape and debris throughout the yard, confirming this property was located within City limits. She mentioned her camera had malfunctioned at the time of her inspection, apologizing for the lack of photographs. She noted the violations remained as of January 21, 2009, and March 13, 2009; thus, a Statement of Violation/Notice of Hearing was served on March 30, 2009, requiring the property to be brought into compliance by April 17, 2009. She explained this was a rental property, adding the out-of-State homeowner had been unaware her tenants were not maintaining the property.

- Mr. Meyer MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
  - Mr. Meyer MOVED, Ms. Albers SECONDED to issue a Cease & Desist Order and a fine of up to \$250 per day for future violations. MOTION CARRIED UNANIMOUSLY.
- D. 09-36793 - CODE COMPLIANCE OFFICER - DAWN LEWIS
- Respondent: Edna Kelly and B & S Struck
- Address of Violation: 608 West Olympia Avenue
- Violation of Section 10-1, Litter, trash, debris, stagnant water, excessive growth of vegetation; Section 26-8.11(c), Property maintenance; Section 26-8.14(b), Structures & uses limited in yards; Section 9A-12(a), Nuisances, generally; Section 26-8.11(g), Property maintenance; Section 26-8.11(b), Property maintenance.
- Mr. Schmidt confirmed the respondents were not present.
  - Mr. Meyer MOVED, Mr. Viola SECONDED to enter not guilty pleas on behalf of the respondents. MOTION CARRIED UNANIMOUSLY.
  - Ms. Lewis displayed several photographs of the subject property located within City limits, stating on March 6, 2009, she observed tall grass and weeds over 12 inches throughout the property, overgrown landscaping, outside storage, including furniture and garden supplies, debris on the property such as wood and trash and missing soffit and fascia. She noted she had been unable to locate the homeowner and thus contacted the realtor, who indicated he had never had direct contact with the property owner but rather communicated by electronic mail. She advised all attempts to reach the homeowner were unsuccessful; thus, a Statement of Violation/Notice of Hearing was issued and received by the respondent on March 25, 2009, requiring compliance by April 17, 2009. She concluded all violations remained as of the latter date.
  - Mr. Stevens confirmed the home was vacant.
  - Mr. Meyer MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
  - Ms. Albers questioned the respondent's address of record.
  - Ms. Lewis replied she resided in Florida, albeit not in Punta Gorda. She mentioned she continued to receive complaints regarding this property from neighbors.
  - Mr. Meyer asked if the property was now in compliance.
  - Ms. Lewis replied it was not, reiterating all violations remained.
  - Mr. Kresge MOVED, Mr. Stevens SECONDED to issue a Cease & Desist Order and require the property to be brought into compliance within 21 days of receipt of the Board's Order or be subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

E. 09-36947 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO

Respondent: Laurel Lane Hayes

Address of Violation: 2619 Magdalena Drive/Unit 1A

Violation of Section 12-3, Business tax receipts, dates due & delinquent; penalties.

- Mr. Schmidt confirmed the respondent was not present.
- Mr. Meyer MOVED, Mr. Viola SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
- Ms. Maricela Perdomo, Code Compliance Officer, stated on April 10, 2009, she advised Ms. Laurel Hayes, respondent, of the requirement to renew her LBT which was due September 30, 2008, adding Ms. Hayes advised she would send someone to do so; however, the LBT had not been renewed as of April 21, 2009.
- Mr. Viola questioned the cost of the LBT.
- Recording Secretary Kelly replied \$63 annually, stating all LBTs were due September 30 of each year.
- Mr. Stevens confirmed Ms. Hayes' business was still open.
- Mr. Meyer MOVED, Mr. Viola SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Ms. Albers MOVED, Mr. Viola SECONDED to issue a Cease & Desist Order and require the respondent to pay the required LBT within 5 days of receipt of the Board's Order or be subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

F. 09-36789 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO

Respondent: Ronald Fine

Address of Violation: 936 Lassino Court

Violation of Section 10-1, Litter, trash, debris, stagnant water, excessive growth of vegetation; Section 26-8.11(c)(e), Property maintenance; Section 26-3.13(m), Fences, walls and hedges.

- Mr. Schmidt confirmed the respondent was not present.
- Ms. Albers MOVED, Mr. Viola SECONDED to enter a not guilty plea on behalf of the respondent. MOTION CARRIED UNANIMOUSLY.
- Ms. Perdomo displayed several photographs of the subject property located within City limits, stating on April 6, 2009, she observed tall hedges and unkempt landscaping throughout as well as dead palm fronds. She noted the property was vacant, adding a Statement of Violation/Notice of Hearing was issued by certified mail; however, she had not yet received proof of service; therefore, the property was posted on April 13, 2009. She concluded the property had not been maintained as of April 21, 2009.
- Mr. Meyer asked how the respondent could be notified of the Board's actions.

- Ms. Perdomo replied the respondent resided in Lake Worth, Florida, stating Florida Statute provided for notification by posting the property in the event service could not be attained through certified mail. She noted service could also be attempted through a process server; however, she was unsure of the cost as the respondent resided out of County.
- Ms. Albers MOVED, Mr. Meyer SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- City Attorney Levin confirmed staff would continue to make every attempt to notify the property owner; however, he reminded the Board this was not yet an ongoing, troublesome situation.
- Mr. Viola MOVED, Ms. Albers SECONDED to issue a Cease & Desist Order and require all violations to be eliminated within 14 days of receipt of the Board's Order or be subject to a fine of up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

#### UNFINISHED BUSINESS

**Note: Item A was heard following Approval of Minutes.**

**A. 08-36130 - CODE COMPLIANCE OFFICER - RANDY WRIGHT**

Respondent: Rafael & Ohilda Mirabal

Address of Violation: 3813 Whippoorwill Boulevard

Violation of Section 9A-12(a)(b), page 9A-8, Nuisances, generally; Section 26-8.11(a)(g), page 26-89, Property maintenance.

- Mr. Wright provided a brief review of events surrounding this case, as delineated in the Compliance Order in the Board's agenda material, stating the respondent had been ordered to eliminate the visual blight in front of his home within 60 days of November 26, 2008, and to eliminate all violations within 6 months of the same date or be subject to daily fines. He displayed several photographs of the subject property, pointing out everything was complete with the exception of the top half and roof at the front of the home. He clarified Mr. Rafael Mirabal, respondent, had not received the Board's Order until January 2009; thus, two months remained before all violations must be eliminated.
- Mr. Herbert Bosch, respondent's representative, translated for Mr. Mirabal, expressing Mr. Mirabal's agreement with the above mentioned two month time frame; however, he was somewhat concerned with being able to complete all "finish" work.
- Mr. Wright recommended the Board review the case in two months, stating he would provide updated photographs at that time.
- Mr. Stevens MOVED, Mr. Meyer SECONDED to extend the compliance date for Case #08-36130 to June 24, 2009. MOTION CARRIED UNANIMOUSLY.

- Mr. Mirabal thanked the Board for their consideration.
- City Attorney Levin clarified the respondent would not have to appear at the June 24, 2009 meeting if Mr. Wright was satisfied with the completed work.

**Note: Item B was heard following Item F, New Business.**

**B. 09-36557 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO**

Respondent: Roy G. & Eunice M. Wiley

Address of Violation: 653 Mary Street

Violation of Section 9A-12(a), Nuisances, generally.

- City Attorney Levin provided a brief review of events surrounding this case, as delineated in the Compliance Order in the Board's agenda material, stating the respondent had indicated he was making substantial progress toward compliance. He explained the Board had granted an additional 30 days to allow Ms. Perdomo to confirm same.
- Ms. Perdomo displayed the original photographs taken of the subject property followed by photographs taken the previous day, April 21, 2009, stating the property was almost but not fully in compliance.
- City Attorney Levin interjected the Board had made a finding of violation subject to this respondent and this property in 2007, adding the property was not brought into compliance in accordance with the deadline imposed by the Board. He asked for a penalty for a specific number of days for failure to comply with the Board's prior Order.
- Ms. Perdomo recommended against imposing a penalty at this time, requesting an additional ten days be provided in that it seemed almost all violations had been addressed; however, she deferred to the Board's discretion.
- Ms. Albers MOVED, Mr. Stevens SECONDED to extend the compliance date by 10 days from receipt of the Board's Order or be fined up to \$250 per day. MOTION CARRIED UNANIMOUSLY.

**OLD BUSINESS**

**A. Hearings Imposing Penalties**

**1. 09-36447 - CODE COMPLIANCE OFFICER - RANDY WRIGHT**

Respondent: D & S Property Investments

Address of Violation: 1305 Tamiami Trail

Violation of Section 7-32(a)(1), page 7-17, Violations of building codes, penalties; Section 26-7.4(a)(2)(e,g), page 26-66, General building principles; Section 26-7.4(e)(10)(g), page 26-71, Highway commercial building principles.

- Mr. Wright reported the respondent had applied for all necessary permits, adding those applications were being processed. He recommended against imposition of a fine as a concerted effort had been made to bring the property into compliance.
  - Mr. Schmidt asked if compliance had been attained as of this date.
  - Mr. Wright replied it had not as a building permit had not been issued.
  - Mr. Schmidt asked if Mr. Wright felt this would be a reoccurring problem.
  - Mr. Wright replied he did not.
  - Mr. Bailey MOVED, Mr. Kresge SECONDED to continue Case #09-36447 to May 27, 2009. MOTION CARRIED UNANIMOUSLY.
2. 09-36473 - CODE COMPLIANCE OFFICER - MARICELA PERDOMO
- Respondent: Waterside Design & Development LLC
- Address of Violation: 2346 Magdalena Drive
- Violation of Section 9A-12(a,b), Nuisances, generally; Sections 10-1 & 10-1.1, Litter, trash, debris, stagnant water, excessive growth of vegetation; Section 10-2, Procedure when property owner(s) fail to remove; Section 6A-2.14, Construction site access.
- Ms. Perdomo stated on February 25, 2009, the property owner was given 10 days upon receipt of the Board's Order to bring the property into compliance due to remaining construction debris. She mentioned the Board's Orders were received on March 2, 2009. She displayed several photographs of the property, concluding the respondent had taken no action.
  - Mr. Stevens clarified compliance had been required by March 12, 2009.
  - Mr. Kresge MOVED, Mr. Viola SECONDED to impose a fine of \$100/day for 41 days from March 12, 2009, to April 21, 2009, for a total fine of \$4,100.
  - VOTING AYE: Bailey, Kresge, Meyer, Stevens, Viola, Schmidt.
  - VOTING NAY: Albers.
  - MOTION CARRIED.

**OTHER BUSINESS**

- City Attorney Levin announced City Council had recently raised the issue of costs associated with the Board Attorney's presence at these meetings. He noted he had advised City Council of his inability to advise the Board in that he was present acting as a prosecutor on behalf of the City. He continued he also informed City Council of the impossibility of determining the need for a Board Attorney prior to a meeting as opposed to during same. He explained City Council elected to leave the decision to the Board as to if and when they needed to have legal representation. He suggested the Board adopt some type of policy with respect to coverage by the Board Attorney.

- Mr. Schmidt acknowledged some cases lent themselves to pre-knowledge of such a need; however, it was impossible to determine same in all cases. He opined requiring the Board Attorney to be present at every meeting seemed to be the only logical solution. He acknowledged the Board could vote to continue a case if it was determined legal representation was necessary but the Board Attorney was not in attendance.
- City Attorney Levin agreed; however, a respondent could claim denial of their due process in that type of situation.
- Mr. Viola commented the Board acted without an attorney for many years.
- Mr. Bailey asserted he had served on this Board for over ten years, adding members had never requested an attorney.
- Mr. Stevens confirmed a transcript of the meeting was necessary if an appeal of a Board decision was made. He asked if the Board could be made aware ahead of time of a respondent's intention to bring a Court reporter.
- City Attorney Levin agreed the presence of a Court reporter was a sign there may be an appeal; however, that was not necessarily the case. He pointed out an appeal could still be filed in a case where no Court reporter and/or attorney was present. He questioned the average cost for the Board Attorney to attend a Board meeting.
- Board Attorney John Polk replied \$300 to \$400.
- Discussion ensued with regard to establishment of procedures relative to the Board Attorney's presence at Code Enforcement Board meetings.
- City Attorney Levin offered to provide draft rules of procedure for the Board's review at their next meeting. He suggested proceeding on an "as needed" basis, stating the Board could later determine whether there was a need to have legal representation at each meeting.
- Consensus of members was to require the Board Attorney to be present on an "as needed" basis.
- Mr. Schmidt noted agenda packets must be provided to members far enough in advance to allow adequate time to request the Board Attorney's presence.
- City Attorney Levin asked when members were typically provided with their agendas.
- Ms. Donyl Yates, Code Compliance Division, replied agenda packets were finalized on the Friday before each meeting.
- City Attorney Levin clarified members were given only two business days for review. He pointed out the Board Attorney would most likely require additional scheduling time if his presence was required.

- Mr. Schmidt suggested agendas only could be provided to members by electronic mail further in advance than the Friday before each meeting.

**ADJOURNMENT**

- Meeting Adjourned: 10:32 a.m.

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Heinz Schmidt, Chairman

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Mary Kelly, Recording Secretary