

**CODE ENFORCEMENT BOARD
MEETING
APRIL 25, 2018**

MEMBERS PRESENT: John Chalifoux, Chairman
Norman Ashworth, Henry Bauman, Trudi Baxter,
William Brennan, John Burrage, Vic Poitras

OTHERS PRESENT: Lavosia Price, Code Compliance Officer
City Attorney David Levin
Lisa Hannon, Zoning Official
Allen McDaniel, Code Compliance Officer
Nick Falkner, Code Compliance Officer
David McCarty, Code Compliance Supervisor

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- 1. Roll Call
- B. Next Scheduled Meeting
- 1. May 23, 2018

APPROVAL OF MINUTES

- A. March 28, 2018
- Mr. Burrage MOVED, Ms. Baxter SECONDED approval of the March 28, 2018 minutes.
MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Welch swore in all participants.
- A. 17-66094 – CODE COMPLIANCE OFFICER – LAVOSIA PRICE JR
Respondents: Deepak & Sharon Singh
Address of Violation: 1207 Gorda Cay Lane
Violation of Chapter 26, Section 8.5 (b) (1) f Fences, Privacy Walls and Hedges
Violation of Chapter 26, Section 8.11 (c) Property Maintenance Grass
- Mr. Lavosia Price, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating a February 1, 2018, inspection found multiple trees within six feet of the seawall. He reviewed the City's efforts to bring the property into compliance, concluding a reinspection the previous day found the violations remained. He then submitted an invoice for case costs incurred in the amount of \$24.76.
- Mr. Chalifoux entered a plea of not guilty on behalf of the absent respondent.
- Ms. Baxter MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case.
MOTION CARRIED UNANIMOUSLY.

- Mr. Bauman inquired as to the applicability of laches regarding these trees as they had grown without citation for years.
 - City Attorney Levin replied the City responded to complaints; it did not seek out violations. He explained laches only applied if the City delayed in responding to a known issue. He asserted as this case was driven by a recent complaint and there was no statute of limitations in Code Enforcement matters, the City's actions were appropriate and necessary to protect the seawall.
 - Ms. Lisa Hannon, Zoning Official, noted Code Enforcement cases could be complaint-driven or incidental to inspections.
 - Mr. Burrage MOVED, Mr. Brennan SECONDED to find the respondent guilty, to issue a Cease and Desist Order for any future violations, to order the property be brought into compliance within 10 days and to require payment of case costs incurred in the amount of \$24.76 within 10 days, subject to a fine of up to \$250 per day plus applicable interest.
 - Mr. Bauman proposed an amendment which would grant more time to remove the trees.
 - Mr. Burrage countered the respondent could request more time.
 - Ms. Baxter inquired as to the initial length of time the respondent had been granted to come into compliance.
 - Mr. Price responded 15 days.
 - Mr. Burrage AMENDED the motion, Mr. Brennan SECONDED to find the respondent guilty, to issue a Cease and Desist Order for any future violations, to order the property be brought into compliance within 15 days and to require payment of case costs incurred in the amount of \$24.76 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.
- B. 18-66767 – CODE COMPLIANCE OFFICER – ALLEN MCDANIEL
- Respondents: George & Anna Mitchell
- Address of Violation: 36 Sabal Drive
- Violation of Chapter 26, Section 8.11 (b) Property Maintenance Structure
- Violation of Chapter 9, Section 9-12 (c) Auxiliary Structures
- Violation of Chapter 26, Section 1.10 No Permit
- Violation of Chapter 26, Section 1.4 No Permit
- Violation of Chapter 26, Section 1.5 No Permit
- Mr. Allen McDaniel, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating a February 13, 2018, inspection found torn screens on the lanai and unpermitted paver improvements in the rear pool deck area. He reviewed the City's efforts to bring the property into compliance, noting a reinspection March 14, 2018, found the screens had been repaired, but the unpermitted

paver improvements remained. He concluded reinspection the previous day found the permit had been submitted and partially approved; however, the walkway remained on the property. He then submitted an invoice for case costs incurred in the amount of \$16.25.

- Mr. Chalifoux entered a plea of not guilty on behalf of the absent defendant.
- Ms. Baxter MOVED, Mr. Bauman SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. Poitras MOVED, Mr. Burrage SECONDED to find the respondent guilty, to issue a Cease and Desist Order for any future violations, to order the property be brought into compliance within 15 days and to require payment of case costs incurred in the amount of \$16.25 within 15 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.
- Mr. Bauman questioned if a tree along the seawall in one of the displayed pictures was in violation of City Code.
- Mr. McDaniel agreed to investigate the situation.

C. 18-66953 – CODE COMPLIANCE OFFICER – NICK FALKNER

Respondents: Robert J. & Lisa Mary Riley

Address of Violation: 402 East Henry Street

Violation of Chapter 26, Section 8.11 (c) Property Maintenance Grass

Violation of Chapter 9, Section 9-2 (a) Outside Storage

Violation of Chapter 26, Section 8.14 (b) Outside Storage

- Mr. Nick Falkner, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating a February 5, 2018, inspection found tall grass and/or weeds throughout the subject property. He reviewed the City's efforts to bring the property into compliance, noting a reinspection March 1, 2018, found the previous violation remained in addition to new outside storage of items in the rear yard. He concluded reinspection this date found the property was in compliance. He then submitted an invoice for case costs incurred in the amount of \$16.25, requesting a Cease and Desist Order for future violations.
- Mr. Ashworth MOVED, Mr. Burrage SECONDED to issue a Cease and Desist Order for any future violations and to require payment of case costs incurred in the amount of \$16.25 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.

D. 17-64599 – CODE COMPLIANCE OFFICER – ALLEN MCDANIEL

Respondent: Donald F. Freeman

Address of Violation: 1133 Treasure Cay Court

Violation of Chapter 26, Section 8.11 (a) Dirty Roof

- Mr. Chalifoux noted the property was in compliance, calling for dismissal.
- Mr. Burrage MOVED, Ms. Baxter SECONDED to dismiss the case. MOTION CARRIED UNANIMOUSLY.

E. 18-67351 – CODE COMPLIANCE OFFICER – ALLEN MCDANIEL

Respondents: Scott & Duek-Jeom Coover

Address of Violation: 171 Crescent Drive

Violation of Chapter 26, Section 8.11 (e) Property Maintenance - Dead Tree

Violation of Chapter 20, Section 20-1 (a) Works in Public Right-of-Way

- Mr. McDaniel displayed several photographs of the subject property, located within City limits, stating a March 2, 2018, inspection found bare soil on the right front landscaped area and side yard of the property, a dead tree and landscaped areas and curbing in the right-of-way (ROW). He reviewed the City's efforts to bring the property into compliance, noting a reinspection March 27, 2018, found the side yard's areas of bare soil had been sodded, but the other violations remained. He concluded reinspection the previous day found the property was now in compliance except for the landscaping and curbing in the ROW, submitting an invoice for case costs incurred in the amount of \$19.25.
- Mr. Scott Coover, respondent, pleaded not guilty.
- Ms. Baxter MOVED, Mr. Poitras SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
- Mr. McDaniel reviewed details of his experience and training at the respondent's request.
- Mr. Coover recalled the March 2, 2018 inspection, questioning whether the initial violation was complaint-driven.
- Mr. McDaniel responded the violation was discovered through a routine inspection.
- Mr. Coover reviewed his efforts to come into compliance, asserting he could not acquire Bermuda grass to sod the areas of bare soil. He stated he had planned to let the tree stump remain in place to reduce erosion until he secured a new tree. He then questioned how Mr. McDaniel had determined his flower pot was within the City's ROW.
- Mr. McDaniel responded the ROW was defined as the area street-side of utilities infrastructure.
- Mr. Coover inquired as to the location of this definition.
- Mr. McDaniel replied the definition of particular ROWs varied from street to street.

- Mr. Covert suggested Mr. McDaniel had relied upon the GIS diagram of his property. He then distributed a metes-and-bounds survey, as delineated in the agenda materials, proclaiming the sewer box was on his property; therefore, he placed his flowerpot upon it to signify same. He then distributed pictures of the subject landscaping and curbing, as delineated in the agenda materials, explaining he had landscaped the area in an attempt to prevent erosion from burying his water meter. He drew attention to an image which demonstrated his water meter lay approximately fourteen inches below ground level, noting approximately eight failed meter readings had occurred. He next drew attention to the Code Compliance process, opining he had not received courteous education. He contended his citation was facially insufficient, calling attention to specific excerpts from City Code Section 20-1, which he contended verified his claim. He then inquired if Mr. McDaniel felt any of his landscaping was a public safety concern.
- Mr. McDaniel responded in the negative.
- Mr. Covert questioned if drainage flow had been impacted.
- Mr. McDaniel stated he could not determine same.
- Mr. Covert demanded a yes or no answer.
- City Attorney Levin objected, stating Mr. McDaniel had indicated he could not answer the question, which meant it was not a yes-or-no question.
- Mr. Covert suggested Mr. McDaniel had been at the subject property often enough to make that determination. He returned to the City Code and State law, claiming the Code Enforcement Board was a board of equalization. He then distributed an exhibit which presented properties with similar curbing in the ROW, reviewing them individually.
- City Attorney Levin confirmed Mr. Covert did not know whether these properties had permits or when their curbing had been installed, especially as it related to the establishment of City Code requiring a permit for curbing in the ROW. He countered the Code Enforcement Board was not an equalization board. He then inquired as to what the line on Mr. Covert's survey represented.
- Mr. Covert explained same was the location of the sewer pipe.
- City Attorney Levin confirmed the location of the sewer box on the survey and that everything shown toward the bottom of the picture from the line Mr. Covert drew on the survey was within the ROW. He then inquired as to who installed the curbing.
- Mr. Covert responded Custom Curbing had installed it at his request six or seven years ago.
- City Attorney Levin questioned if installation could have occurred more than seven years ago.

- Mr. Coover responded installation had occurred subsequent to his moving into the house in 2008.
- City Attorney Levin inquired if a permit had been acquired for the curbing.
- Mr. Coover replied in the negative.
- City Attorney Levin inquired whether Mr. Coover received the Notice of Violation, which noted a permit must be obtained for the structures within the ROW.
- Mr. Coover responded conversations at the time specified he would need a permit if he were to cover his side-yard in rock as opposed to sod.
- City Attorney Levin advised the curbing in the ROW had to be removed within 21 days, questioning if Mr. Coover understood which area was being specified.
- Mr. Coover responded Mr. McDaniel had stated all landscaping and curbing must be located behind the telephone pole.
- City Attorney Levin inquired if Mr. Coover had asked staff why he needed to remove the curbing.
- Mr. Coover responded he had spoken about same with Mr. McDaniel, alleging Mr. McDaniel had responded, "Because we can."
- City Attorney Levin inquired as to the number of meetings Mr. Coover had with staff regarding the curbing.
- Mr. Coover stated he attended two meetings.
- City Attorney Levin confirmed Mr. Coover received the Affidavit and Notice of Violation, questioning if Mr. Coover had not removed the curbing because he did not believe he was in violation.
- Mr. Coover stated he was not in violation of City Code.
- City Attorney Levin asserted Mr. Coover elected not to comply with the notice.
- Mr. Poitras confirmed the house was already constructed when Mr. Coover purchased the subject property.
- Discussion ensued regarding the elevation of the property.
- City Attorney Levin displayed City Code Section 20-1, questioning which provisions Mr. Coover contended did not apply to him.
- Mr. Coover replied "any structure or topographical feature," opining landscape curbing was not a structure.
- City Attorney Levin established Ms. Hannon was employed by the City as the Zoning Official, inquiring as to her duties and responsibilities.
- Ms. Hannon explained she enforced the City Code and supervised Code Enforcement staff.

- City Attorney Levin confirmed Ms. Hannon had expert knowledge regarding when provisions of City Code were amended, inquiring as to the date when the first paragraph of City Code Section 20-1(a) was adopted in its present form by City Council.
- Ms. Hannon responded 1982.
- City Attorney Levin questioned if the term "structure" applied to landscape curbing.
- Ms. Hannon replied in the affirmative.
- City Attorney Levin confirmed staff considered landscape curbing a structure in that particular provision, questioning if City Code Section 20-1(a) required a permit for same in the ROW.
- Ms. Hannon responded that had always been staff's interpretation.
- City Attorney Levin questioned if Ms. Hannon was aware of a permit for the subject curbing.
- Ms. Hannon replied there was no such permit to her knowledge.
- City Attorney Levin inquired if Mr. Coovert's landscape curbing had been installed after the adoption of the provision requiring a permit for landscape curbing in the ROW.
- Ms. Hannon replied in the affirmative.
- Mr. Chalifoux inquired as to why the Notice of Violation did not indicate the landscape curbing had been installed without a permit.
- Ms. Hannon responded same was an oversight by the Code Compliance Division.
- City Attorney Levin summarized City Code stated the installation of a structure in the ROW was prohibited without a permit, indicating the respondent had been advised he must obtain a permit within 21 days. He asserted Mr. Coovert could have obtained a permit if he wished to keep the curbing had he not decided City Code Section 20-1(a) did not apply to him.
- Mr. Chalifoux inquired if City Attorney Levin believed the properties cited by Mr. Coovert were in legal noncompliance.
- City Attorney Levin asserted same was irrelevant to this case.
- Mr. Poitras commented contractors typically informed a client when a permit was required, questioning if Custom Curbing advised Mr. Coovert he needed a permit.
- Mr. Coovert replied the curbing was limited to a small area, asserting he did not need a permit for many small improvements to his property. He opined City Code Section 9a-5(h) indicated the Board was an equalizing board to some extent.
- Mr. Ashworth MOVED, Ms. Baxter SECONDED to find the respondent guilty, to issue a Cease and Desist Order for any future violations, to order the property be brought into compliance within 10 days and to require payment of case costs incurred in the amount of \$19.25 within 10 days, subject to a fine of up to \$250 per day plus applicable interest.

AYE: Ashworth, Bauman, Baxter, Brennan, Burrage.

NAY: Poitras, Chalifoux.

MOTION CARRIED.

- Mr. Coover questioned the location of the property line.
- City Attorney Levin called a point of order as the Board had made a decision, advising a response was not required. He reminded the Board Mr. Coover had already demonstrated the location of the property line in relationship to the curbing.
- Mr. Coover stated he would cut the curbing to the property line and install a wall. He then requested the ten properties in his exhibit be investigated.

F. 17-64265 – CODE COMPLIANCE OFFICER – ALLEN MCDANIEL

Respondent: Robert A. Nicholas Jr., Trustee

Address of Violation: 3021 Roma Court

Violation of Chapter 26, Section 3.13 (n) Garbage Containers

Violation of Chapter 9, Section 9-2 (a), (b) Outdoor Storage

Violation of Chapter 9, Section 9-2 (d) Unlicensed Vehicle

Violation of Chapter 26, Section 3.13 (h) Parking on Developed Property

Violation of Chapter 26, Section 8.11 (b) Missing and Torn Screens

Violation of Chapter 9, Section 9-12 (e) Missing and Torn Screens

- Mr. McDaniel displayed several photographs of the subject property, located within City limits, stating a March 16, 2018, inspection found garbage containers located on the right side of the property, outdoor storage at the front and left side of the property and an untagged vehicle with a flat tire parked on the driveway and front yard of the property. He reviewed the City's efforts to bring the property into compliance, noting an April 2, 2018, reinspection found the garbage containers as well as the outdoor storage at the front and side of the property had been addressed and the original untagged vehicle had been removed from the property; however, a new untagged vehicle with flat tires was parked on the driveway, there was new outdoor storage of items at the rear of the property, and there was missing and torn screening on the lanai. He concluded reinspection on April 24, 2018, found the untagged vehicle had been removed from the property but the outdoor storage at the rear of the property remained, submitting an invoice for case costs incurred in the amount of \$25.51.
 - Ms. Baxter MOVED, Mr. Bauman SECONDED the City had presented a prima facie case.
- MOTION CARRIED UNANIMOUSLY.
- Mr. Chalifoux entered a plea of not guilty on behalf of the absent defendant.
 - Mr. Burrage confirmed the storage on the porch would not be a violation if the screens were repaired. He inquired as to the occupancy of the property.

- Mr. McDaniel replied the property was unoccupied at this time.
- Mr. Burrage questioned if the property had a history of violations.
- Mr. McDaniel reviewed the history of the property's violations, noting he had contacted the occupants multiple times.
- Ms. Baxter MOVED, Mr. Burrage SECONDED to find the respondent guilty, to issue a Cease and Desist Order for any future violations, to order the property be brought into compliance within 15 days and to require payment of case costs incurred in the amount of \$25.51 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

A. HEARING IMPOSING PENALTY REPEAT VIOLATION

17-66352 – CODE COMPLIANCE OFFICER – NICK FALKNER

Respondents: Donald A. & Linda K. Linder

Address of Violation: 7191 North Plum Tree

Violation of Chapter 26, Section 8.11 (a) Dirty Roof

- Mr. Chalifoux confirmed repeat violations were subject to a maximum fine of \$500 each day.
- Mr. Falkner displayed several photographs of the subject property, located within City limits, drawing attention to the Board's Cease and Desist order dating to February 24, 2016 for case #15-58253, announcing the property initially came into compliance March 23, 2016. He noted a December 8, 2017, inspection found more than twenty percent of the roof was covered in dirt or mold. He reviewed the City's efforts to bring the property into compliance, noting this was a repeat violation. He stated reinspection this date found the violation had remained for a total of 139 days of non-compliance, submitting an invoice for total case costs incurred in the amount of \$47.61.
- Mr. Poitras inquired as to previous fines.
- Mr. David McCarty, Code Compliance Supervisor, replied the property was brought into compliance before a fine was issued.
- Mr. Ashworth questioned if staff had spoken with the respondent.
- Mr. Falkner responded he spoke with Ms. Linda Linder, who advised Mr. Donald Linder was responsible for maintenance of the property. He stated he spoke with Mr. Linder and granted his request for 21 additional days to find a contractor to clean his roof at a reasonable price.
- Mr. McCarty clarified the current case began in December 2017, noting the roof had not yet been cleaned.
- Mr. Burrage suggested Mr. Joe Mazzoni was a contractor with reasonable prices.

- Mr. Burrage MOVED, Mr. Poitras SECONDED to find the respondent in repeat violation, to impose a fine of \$6,950, representing a fine of \$50 per day for 139 days, and to require payment of total case costs incurred in the amount of \$47.61, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.

STAFF COMMENTS

- A. There were no Code Enforcement liens recorded in January 2018.
- City Attorney Levin offered to answer any questions.
 - Mr. Bauman questioned if the Board could subpoena persons or evidence.
 - City Attorney Levin responded the Board had that right by Statute.
 - Mr. Bauman inquired as to the utility of that provision with regard to Mr. Douglas Plattner.
 - City Attorney Levin replied there was no established procedure for same; therefore, Code Enforcement Boards generally did not subpoena persons or evidence. He opined Mr. Plattner would plead his Fifth Amendment right and refrain from commenting were he subpoenaed.
 - Mr. Poitras inquired as to the status of a timeline regarding Mr. Plattner.
 - City Attorney Levin announced the case would go to court soon, but a hearing date had not been scheduled. He then noted Mr. Michael Haymans no longer represented Mr. Plattner.
 - Mr. Poitras requested the Code Liens report include totals.
 - Mr. Chalifoux spoke in favor of a police officer attending meetings.
 - Ms. Hannon explained staff was advised an officer might be necessary if the respondent for Case # 17-64265 appeared.
 - Discussion ensued with consensus to request a police officer attend Code Enforcement Board meetings.
 - Mr. Brennan questioned how twenty percent became the standard for dirty roofs.
 - Ms. Hannon voiced uncertainty regarding same, providing a brief overview of the history of that section of City Code.
 - Mr. Chalifoux reiterated staff would investigate the properties cited by Mr. Coovert.
 - City Attorney Levin stated a report regarding those properties would be presented to the Board.

ADJOURNMENT

- Meeting Adjourned: 10:49 a.m.

John Chalifoux, Chairman

Sara Welch, Recording Secretary