

**CODE ENFORCEMENT BOARD
MEETING
MAY 23, 2018**

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

MEMBERS ABSENT: John Chalifoux

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
Sherri Lytle, Roland Federick, Donald Linder

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- 1. Roll Call
- B. Next Scheduled Meeting
- 1. June 27, 2018

APPROVAL OF MINUTES

- A. April 25, 2018
- Mr. Burrage MOVED, Mr. Bauman SECONDED approval of the April 25, 2018 minutes.
MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- Recording Secretary Welch swore in all participants.
- A. 18-66952 - CODE COMPLIANCE OFFICER - NICK FALKNER
 - Respondents: Primax Properties, LLC
 - Registered Agent: Corporation Service Company
 - Address of Violation: 700 Tamiami Trail
 - Violation of Chapter 26, Section 8.11 (a) Dirty Awnings
- Mr. Poitras entered a plea of not guilty on behalf of the absent defendant.
- Mr. Nick Falkner, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating a March 5, 2018, inspection found more than twenty percent of the awnings were not free from dirt or mold. He reviewed the City's efforts to bring the property into compliance, noting a reinspection April 10, 2018, found the violation remained. He concluded reinspection on May 22, 2018,

found the property remained out of compliance. He then submitted an invoice for case costs incurred in the amount of \$27.59.

- Ms. Baxter MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.

- Mr. Burrage 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 \$27.59 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.

B. 16-62605 - CODE COMPLIANCE OFFICER - ALLEN MCDANIEL

Respondents: Robert J. & Brenda K. Beiter

Address of Violation: 572 Belvedere Court

Violation of Chapter 26, Section 3.13 (e) SRO Sod

Violation of Chapter 6, Section 6-7 (b) (1) (2) (a) (c) Seawall & Appurtenances

- Mr. Poitras entered a plea of not guilty on behalf of the absent defendant.

- Mr. Allen McDaniel, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating a March 2, 2018, inspection found rocks were installed within six feet of the seawall and a railing was attached to the seawall cap. He reviewed the City's efforts to bring the property into compliance, noting a reinspection April 12, 2018, found the initial violations had been addressed, but bare soils were discovered adjacent to the walkway and within six feet of the seawall. He concluded reinspection on May 22, 2018, found the bare soils remained. He then submitted an invoice for case costs incurred in the amount of \$16.55.

- Mr. Ashworth MOVED, Ms. Baxter SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.

- Mr. Poitras inquired as to the property's occupancy.

- Mr. McDaniel responded the property owner lived in Pennsylvania.

- Mr. Brennan 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 30 days and to require payment of case costs incurred in the amount of \$16.55 within 30 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.

C. 18-66704 - CODE COMPLIANCE OFFICER - ALLEN MCDANIEL

Respondents: Ronald L. French

Address of Violation: 3800 Bermuda Court

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

- Mr. Poitras entered a plea of not guilty on behalf of the absent defendant.
 - Mr. McDaniel displayed several photographs of the subject property, located within City limits, stating a February 22, 2018, inspection found more than twenty percent of the roof on the home at the property was covered with dirt or mold. He reviewed the City's efforts to bring the property into compliance, noting a reinspection April 23, 2018, found the violation remained. He concluded reinspection on May 22, 2018, found the property remained out of compliance. He then submitted an invoice for case costs incurred in the amount of \$24.16.
 - Ms. Baxter MOVED, Mr. Burrage SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
 - Mr. Burrage confirmed contact had not been made with the property owner.
 - Mr. Poitras inquired if the owner was also the occupant.
 - Mr. McDaniel expressed uncertainty.
 - Mr. Burrage MOVED, Mr. Ashworth 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 \$24.16 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.
- D. 18-67509 - CODE COMPLIANCE OFFICER - NICK FALKNER
- Respondents: Jack R. & Mavis I. Lytle
- Address of Violation: 650 Trumpet Tree
- Violation of Chapter 26, Section 8.13 (a) Soil Conservation
- Violation of Chapter 26, Section 12.4 (k) Bare Soils
- Ms. Sherri Lytle entered a plea of not guilty.
 - Mr. Falkner displayed several photographs of the subject property, located within City limits, stating an April 5, 2018, inspection found bare soil on the right side-yard of the property. He reviewed the City's efforts to bring the property into compliance, noting an April 27, 2018, reinspection found the violations remained. He concluded reinspection on May 22, 2018, found grass growing on the right side yard, but areas of bare soil remained. He then submitted an invoice for case costs incurred in the amount of \$16.10.
 - Mr. Ashworth MOVED, Mr. Brennan SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
 - Ms. Lytle explained the company she hired to remove a tree following Hurricane Irma did not remove the debris for three weeks, which killed the grass. She drew attention to photographs which demonstrated seed she planted resulted in new grass growth.

- Mr. Poitras inquired as to the efforts to seed the property.
 - Ms. Lytle indicated she seeded the yard multiple times as rain washed some seed away.
 - Mr. Ashworth questioned if the case should be put on hold.
 - Mr. McDaniel drew attention to a vehicle depicted in a photograph which was sometimes parked on the grass, suggesting it hindered the grass' growth.
 - Ms. Lytle explained her driveway could fit only four of her five vehicles.
 - City Attorney Levin advised the Board could find there was a violation and only issue a Cease and Desist Order; then, if the grass was not maintained, the case could return to the Board.
 - Mr. Bauman MOVED, Mr. Burrage SECONDED to find the respondent guilty, to issue a Cease and Desist Order for any future violations and to require payment of case costs incurred in the amount of \$16.10 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.
- E. 18-67917 - CODE COMPLIANCE OFFICER - ALLEN MCDANIEL
- Respondents: Frank & Katharine Gorman
- Address of Violation: 2838 Deborah Drive
- Violation of Chapter 6, Section 6-11 (a) (c) (1) (2) Storage of Boat
- Violation of Chapter 9, Section 9-2 (a), (e) Storage of Boat, Un-registered Boat
- Mr. Poitras entered a plea of not guilty on behalf of the absent defendant.
 - Mr. McDaniel displayed several photographs of the subject property, located within City limits, stating an April 20, 2018, inspection found an undocumented, unregistered watercraft tied to the property's dock which was encroaching on the adjoining property. He reviewed the City's efforts to bring the property into compliance, noting a reinspection April 30, 2018, found the violations remained. He concluded reinspection on May 22, 2018, found the property remained out of compliance. He then submitted an invoice for case costs incurred in the amount of \$24.91.
 - Mr. Ashworth MOVED, Ms. Baxter SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
 - Mr. Poitras inquired as to where the notices were addressed.
 - Mr. McDaniel responded the notices had been sent to a Marco Island address.
 - Mr. Poitras questioned the extent to which the watercraft encroached across the adjoining property line.
 - Mr. McDaniel estimated a minimum of five feet.
 - Mr. Ashworth confirmed this was the same vessel which had been partially submerged in a previous case.

- Mr. Burrage MOVED, Mr. Bauman 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 \$24.91 within 10 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.
- F. 18-66726 – CODE COMPLIANCE OFFICER – LAVOSIA PRICE, JR.
- Respondents: Roland Federick
Address of Violation: 502 Showalter Avenue
Violation of Chapter 26, Section 8.11 (e) 1, 2, 3, 4, 5 Landscape Debris
- Mr. Roland Federick entered a plea of not guilty.
 - Mr. Lavosia Price, Code Compliance Officer, displayed several photographs of the subject property, located within City limits, stating a January 19, 2018, inspection found a downed tree and its exposed root system on the front of the property. He reviewed the City’s efforts to bring the property into compliance, noting a reinspection May 2, 2018, found the violations remained. He concluded reinspection on May 22, 2018, found the property remained out of compliance. He then submitted an invoice for case costs incurred in the amount of \$16.10.
 - Mr. Brennan MOVED, Mr. Ashworth SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
 - Mr. Federick explained the tree had fallen during Hurricane Irma, indicating he had been cutting branches from the tree which he intended to chip once they dried. He expressed uncertainty as to how to dispose of the root system, noting he had contacted United Way for guidance.
 - Mr. Poitras pointed out the first notice had been sent out in January before the rainy season began.
 - Mr. Federick responded he did not have equipment to cut the tree at that time.
 - Ms. Baxter inquired if Mr. Federick could hire a company to remove the tree.
 - Mr. Federick replied he did not have the funds to do so.
 - Mr. Poitras questioned if the cut branches should be placed street-side for pickup.
 - Mr. Price replied vacant lots did not receive pickup service.
 - Mr. Poitras questioned if the respondent had a vehicle to remove the debris.
 - Mr. Federick replied in the negative, indicating he planned to advertise the tree chips as free mulch at the property.
 - Mr. inquired as to the respondent’s next steps.
 - Mr. Federick responded he expected a call from a United Way representative advising him of available assistance.

- 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 60 days and to require payment of case costs incurred in the amount of \$16.10 within 60 days, subject to a fine of up to \$250 per day plus applicable interest. MOTION CARRIED UNANIMOUSLY.
- G. 18-67600 - CODE COMPLIANCE OFFICER - ALLEN MCDANIEL
- Respondents: Ronald C. Scott
- Address of Violation: 101 Hibiscus Drive
- Violation of Chapter 9, Section 9-2 (a) Outdoor Storage
- Violation of Chapter 26, Section 8.14 (b) Outdoor Storage
- Violation of Chapter 26, Section 8.11 (e) Dead Palm Fronds
- Violation of Chapter 26, Section 8.11 (f) Dead Palm Fronds
- Mr. Poitras entered a plea of not guilty on behalf of the absent defendant.
 - Mr. McDaniel displayed several photographs of the subject property, located within City limits, stating an April 12, 2018, inspection found outdoor storage of trash cans and miscellaneous items as well as dead palm fronds on the property's trees. He reviewed the City's efforts to bring the property into compliance, noting a reinspection April 30, 2018, found the violations remained. He concluded reinspection on May 22, 2018, found the property remained out of compliance. He then submitted an invoice for case costs incurred in the amount of \$16.55.
 - Mr. Ashworth inquired if the property owner lived at the home.
 - Mr. McDaniel responded in the negative.
 - Mr. Bauman MOVED, Mr. Brennan SECONDED the City had presented a prima facie case. MOTION CARRIED UNANIMOUSLY.
 - Mr. Burrage 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 \$16.55 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
- 18-66727 - CODE COMPLIANCE OFFICER - LAVOSIA PRICE JR
- Respondents: Bruce & Jolanda Bolliger
- Address of Violation: 354 Martin Luther King Boulevard
- Violation of Chapter 26, Section 8.11 (e) 1, 2, 3, 4, 5 Landscape Debris

- Mr. Price displayed several photographs of the subject property, located within City limits, providing a detailed review of events surrounding the case and the Board's actions dating back to March 28, 2018. He confirmed the property had been in non-compliance for an additional 40 days from April 13, 2018, to May 22, 2018. He submitted an invoice for total case costs of \$58.16.
- Mr. Poitras inquired as to contact with the property owners.
- Mr. Price responded there had been none.
- Mr. Bauman questioned if Mr. Price knew where the respondent lived.
- Mr. Price replied in the negative.
- Mr. Ashworth inquired if the notices were sent to a local address.
- Mr. Price responded a Fort Myers address had been used.
- Mr. Bauman MOVED, Mr. Burrage SECONDED to find the respondent continued to be in violation of the Board's Order, to impose a fine of \$2,000 (\$50 per day for 40 days) plus applicable interest and to require payment of total case costs incurred in the amount of \$58.16. MOTION CARRIED UNANIMOUSLY.

B. REQUEST FOR FINE REDUCTION

17-66352 – CODE COMPLIANCE OFFICER – NICK FALKNER

Respondents: Donald A. & Linda K. Linder

Address of Violation: 7191 N Plum Tree

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

- Mr. Donald Linder requested a fine reduction.
- City Attorney Levin confirmed the property was in compliance.
- Mr. Falkner recalled the Board imposed a fine of \$6,997.61 plus applicable interest on April 25, 2018. He announced the property came into compliance on May 7, 2018, noting Mr. Linder requested a fine reduction on May 10, 2018. He reviewed the history of the case in detail, explaining the lien recorded against the property would remain valid if any remaining fines were not paid as ordered by the Board. He submitted an invoice for additional case costs incurred of \$43.76.
- Mr. Poitras inquired as to the length of time the property remained out of compliance.
- Mr. Falkner replied 139 days.
- Mr. Ashworth questioned why cleaning the roof took so long.
- Mr. Linder responded he had difficulty engaging a contractor at a reasonable rate. He recounted difficulties with his estranged wife who resided at the property.
- Mr. Ashworth confirmed the house was owned by both Mr. Linder and Ms. Linda Linder.
- Mr. Poitras clarified notices were addressed only to the subject property.
- Mr. Ashworth questioned if Ms. Linder received the notices.

- Mr. Falkner replied affirmatively; however, one notice was not received.
- Mr. Linder explained he paid the house payment, taxes and insurance; Ms. Linder paid for utilities, upkeep and maintenance.
- City Attorney Levin stated the property was in compliance, remarking both Mr. Linder and Ms. Linder had been notified.
- Mr. Linder countered he had only been notified regarding his request for fine reduction.
- City Attorney Levin opined this was an unusual situation, summarizing the Board had to consider whether the respondent should be responsible for the entirety of the fine and whether he had the opportunity to maintain the house. He inquired as to who was responsible for maintaining the property.
- Mr. Linder reiterated Ms. Linder.
- City Attorney Levin questioned whether same was a written agreement.
- Mr. Linder replied in the negative.
- Mr. Poitras questioned whether the Board could request Ms. Linder's presence.
- City Attorney Levin replied in the negative. He stated if a fine was imposed for Ms. Linder, Mr. Linder would still be legally responsible. He concluded Mr. Linder did not have practical access to the property; therefore, he did not have to be held responsible for the fine.
- Mr. Bauman asserted this Board was intended to bring about compliance, not generate revenue.
- Mr. Brennan inquired as to the status of the lien against the property.
- Mr. Falkner responded it had been recorded.
- Mr. Bauman MOVED, Mr. Burrage SECONDED to approve the request, to reduce the fine and associated case costs to \$100, to require full payment within 10 days, after which the City would issue a Satisfaction of Lien and to require payment of \$6,997.61 if the reduced fine was not paid within 10 days. MOTION CARRIED UNANIMOUSLY.
- Mr. Linder requested mailings regarding the lien be sent to his post office box.

STAFF COMMENTS

- Mr. David McCarty announced inspections following the formal complaints filed by Mr. Scott Covert at the April 25, 2018, meeting discovered one property had been in violation, but had since come into compliance. He then reviewed Code Enforcement Officers' procedures regarding legal non-conformities. He drew attention to the report regarding liens recorded within the previous three months, noting the lien for 122 Dolly Street had been paid. He then informed the Board the July 2018 meeting had been cancelled due to scheduled construction in City Council Chambers.

COMMITTEE/BOARD COMMENTS

- Ms. Baxter inquired how to proceed if a respondent testified they did not have the financial means to come into compliance.
- Mr. McCarty responded staff could request an order from the Board for the City to abate the violation, adding a lien would be imposed for services rendered.
- Ms. Baxter questioned if Mr. Federick would have to pay the lien in order to sell the property.
- City Attorney Levin responded the lien would survive a foreclosure. He stated he did not recommend this action initially as respondents may decide it was more cost effective to have the City abate their violations.
- Ms. Baxter questioned if the City could verify a respondent lacked the funds to abate a violation.
- City Attorney Levin stated there was limited opportunity to do so.
- Mr. Ashworth inquired if the costs to abate violations were similar between the City and private contractors.
- City Attorney Levin responded the City hired private contractors in most cases, adding the City generally abated violations at vacant lots, not residences.
- Mr. Bauman questioned if that remedy was available for 2838 Deborah Drive.
- City Attorney Levin stated the sailboat at Deborah Drive could not be declared derelict at this time, explaining the next step would be to record a lien against Mr. Frank Gorman and Ms. Katharine Gorman's property in Marco Island, Florida. He then drew attention to the police officer in attendance, explaining the Police Chief would attempt to accommodate the Board's request for an officer's attendance at each meeting.
- Mr. Ashworth noted this would be his last meeting, thanking the Board and staff for their service.

ADJOURNMENT

- Meeting Adjourned: 10:21 a.m.

Vic Poitras, Acting Chairman

Sara Welch, Recording Secretary