

CODE ENFORCEMENT BOARD

A meeting of the Indian River County (IRC) Code Enforcement Board (the Board) was held in the Commission Chambers at the County Administration Building, 1801 27th Street, Building "A", Vero Beach, Florida on Monday, May 19, 2014 at 1:30 p.m.

Present were Chairman **Pete Clements**, General Contractor Appointee; **Tony Gervasio**, Member-at-Large Appointee; **Joe Petrulak**, Subcontractor Appointee; **Karl Zimmermann**, Realtor Appointee; Vice-Chairman **Aaron Bowles**, Engineer Appointee and **David Myers II**, Businessman Appointee.

Let the record show there is a vacancy for an Architect Appointee.

Also in attendance was IRC staff: Roland DeBlois, Environmental and Code Enforcement Chief; Betty Davis, Vanessa Carter Solomon, Rose Jefferson and Kelly Buck, Code Enforcement Officers; Attorney Jennifer Peshke, Attorney for the Board; and Reta Smith, Recording Secretary.

9:50:29 **Call to Order**

Chairman Clements called the meeting to order and led all in the Pledge of Allegiance. The secretary called the roll, establishing that a quorum was present.

Chairman Clements asked all present for a moment of silence in memory of former CEB Attorney David Hancock, who recently passed away quite suddenly. He introduced Attorney Jennifer Peshke as the new Attorney for the Board.

9:52:14 **Approval of Minutes of April 28, 2014**

ON MOTION BY Mr. Petrulak, SECONDED BY Mr. Gervasio, the Board voted unanimously (6-0) to approve the minutes of April 28, 2014 as presented.

9:52:37 **Attorney's Overview of Board Purpose and Procedures**

Attorney Jennifer Peshke, Attorney for the Board, gave a brief overview of the procedures and purpose of the Code Enforcement Board.

Ms. Vanessa Carter Solomon, IRC Code Enforcement Officer, testified a permit was necessary for siding put on the shed and also for an unpermitted structure; however no permits had been applied for.

Respondent Carl French contended all he did was put up siding but the original structure was already on the property when he bought it seven years ago and had been on the site for 27 years. He did not understand why he was cited for building a shed when it was already there and all he did was change the siding, and maintained he should not have received a Notice of Violation in the first place.

Mr. DeBlois advised if the previous owner built the structure without permits it did not alleviate the current owner from obtaining a permit, and noted permits had been required by the County since the late 1950's and the shed would not have been grandfathered. He recommended a 30 day extension, until June 20, 2014, for the Respondent to obtain the permit or remove the shed.

Discussion followed about what the original violation was for.

Mr. Gervasio pointed out this was a compliance hearing and he felt the Board was having an evidentiary hearing all over again. He specified it had already been determined through testimony that the Respondent needed to obtain a building permit and did not think it was not appropriate for the members to be rehearing the case.

10:17:24

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Petrulak, the Board voted unanimously (6-0) to grant an extension of 30 days, until June 20, 2014, for compliance or a \$100 per day fine.

It is noted for the record the Respondent was present for this hearing.

EVIDENTIARY HEARINGS

10:18:14 **Case #2014040065 – John & Katherine Lalime**

Inspector Carter Solomon submitted one photograph into evidence. She related she had received a complaint from the homeowner's association in the subdivision about a basketball hoop in the right-of-way on the subject property, and submitted into evidence section 312.06.1(b) of the County's right-of-way ordinance.

Mr. DeBlois noted if the portable basketball hoop was moved out of the public right-of-way and onto the Respondent's property the case would be in compliance, and he recommended a 24-hour time frame for compliance or a \$100 per day fine.

Respondent Katherine Lalime said the homeowner's association did not have a regulation against basketball hoops and had called on IRC Code Enforcement staff for assistance. She protested the hoop weighed 150 pounds and she was not physically able to move it when her child wanted to play; adding it was in a cul-de-sac and did not affect traffic or obstruct anything on the street.

Discussion ensued.

10:28:18

ON MOTION BY Mr. Zimmermann, SECONDED BY Mr. Gervasio, the Board voted unanimously (6-0) to find the violation and grant a 24-hour time frame, until May 20, 2014, for compliance or a \$100 per day fine.

It is noted for the record the Respondent was present for this hearing.

10:29:19 **Case #2014030066 – Mitchell Dudek & Sharon Kramer**

Mr. DeBlois related this case had to do with vehicle parking and storage on property zoned single family residential that was being used as a vacation rental.

Inspector Carter Solomon submitted an Affidavit of Service indicating the property had been posted on May 9, 2014 and nine photographs into evidence. She testified she had received complaints from adjacent neighbors regarding the parking situation at the property as it related to the vacation rental, because when there was a large party renting the home there was a tendency for cars to park on the sides of the road and outside of the designated parking area.

Mr. DeBlois read from section 911.15.4(b) of the County's code regarding parking and storage of automobiles as follows:

"A maximum of three automobiles may be parked in an unenclosed area on a single-family zoned lot; however one additional vehicle for each licensed driver permanently residing at the premises may be parked on the lot. No automobile may be parked or stored in any required yard area. The provisions of this section shall not preclude the parking of automobiles by persons visiting a single family home."

Mr. DeBlois concluded with staff's position that the number of vehicles shown in the photographic evidence exceeded the amount limited to a single-family residence, and since the house was being used as a vacation rental there was currently no one permanently residing at the premises. Mr. DeBlois added it was also staff's position that the automobiles at the property were not associated with visitors to the home but belonged to people renting the residence.

Inspector Carter Solomon reported the property was in compliance when she inspected the property last week; however there had been a recurring issue up until this time with cars parked across the street from the property and adjacent to the private roadway.

Mr. DeBlois recommended the Board find a violation had occurred and the property was currently in compliance, and enter a Continuing Order so that if the violation was verified in the future a \$100 per day fine would be imposed.

Attorney Barry Seigel, representing the Respondents, stated the subdivision had been platted and a road was constructed in order to allow access off A-1-A to three properties, including the subject property. He pointed out there was a designated right-of-way area but not all of the area was contiguous to his clients' lot and was separated by the roadway; however the plat showed the developers of the subdivision dedicated the right-of-way to the three homeowners to use communally.

Attorney Seigel said the code provision spoke only to parking restrictions within a single-family lot and not to road right-of-ways and the area where the automobiles were parked was not a public road. He maintained the automobiles shown in the photographs were visitors at a party or barbeque held by families renting the premises and there was no evidence to show whether the vehicles belonged to visitors or tenants.

Mr. DeBlois asked how many sleeping accommodations were in the house.

Ms. Elizabeth Green, sister of Respondent Dudek, testified there were six bedrooms.

Mr. DeBlois pointed out there was a Tow Away Zone sign on the common area right-of-way. Attorney Seigel stated the sign was placed by one of the homeowners in the subdivision without the consent of his client.

Discussion followed.

Attorney Seigel asked the Board to dismiss the case.

Attorney Peshke recommended the case be continued so that the legalities of the Notice and whether or not there was due process could be examined.

11:01:37

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Zimmermann, the Board voted unanimously (6-0) to continue the case.

It is noted for the record the Respondents' attorney was present for this hearing.

COMPLIANCE HEARING

11:02:27 **Case #2014020129 – D.R. Horton Inc.**

Mr. DeBlois recapped this was a repeat violation of an Order previously entered by the Board on August 26, 2013 for illegal signs posted in rights-of-way and without permits, and the Respondent had paid a fine in the amount of \$200. He continued there was also a case dating back to October 28, 2013 where the Board entered an Order Finding Violation and advised the Respondent to remove unpermitted signs from the right-of-way.

Ms. Kelly Buck, IRC Code Enforcement Officer, testified on May 5, 2014 she had visited various subdivisions where homes were under construction by the Respondent and had noticed several flags and other illegal signs in the subdivisions. She confirmed she had sent an e-mail on May 8, 2014 to the Respondent's representative, Mr. Howard Darvin, listing the locations and types of each of the violations, and received an e-mail back from him stating all of the illegal signs had been taken down on May 8, 2014.

Inspector Buck submitted three photographs dated May 7 and May 15, 2014 into evidence and pointed out illegal flags located on various properties; and three photos taken on May 19, 2014 showing illegal flag signs on sites being developed by the Respondent.

Mr. DeBlois noted Inspector Buck had confirmed five days of non-compliance at three different sites and based on the Board's past Orders of \$100 per day for each repeat violation, he recommended the Board impose a fine in the amount of \$1,500.

Respondent Howard Darvin advised he had ten different sales people in the County working on commission and it was a constant battle for him to keep them under control as far as illegal sign installation was concerned, and he had personally taken down some signs at various locations.

11:11:15

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Zimmermann, the Board voted unanimously (6-0) to find non-compliance of repeat illegal sign violations for five days at three different locations and impose a fine in the amount of \$1,500.

It is noted for the record the Respondent's representative was present for this hearing.

EVIDENTIARY HEARING

11:13:19 **Case #2014030039 – Cynthia Cioffi**

Mr. DeBlois indicated staff had worked with the Respondent in the past to obtain an after-the-fact permit for a fence on the subject property, and a permit issued on March 15, 2013 contained a condition that the fence in question needed to be relocated out of a private access easement right-of-way. He related the permit had expired without the Respondent moving the fence and staff had re-cited her for the illegal fence violation.

Inspector Carter Solomon submitted into evidence a copy of the permit that had been applied for, together with a sketch showing where the fence was located and where it was proposed to be located, along with three photographs of the property. She described a dirt roadway abutting the fence where all of the residents along the roadway owned a portion of the easement, and stated a neighbor had complained about the location of the fence.

Mr. DeBlois related the Respondent had pointed out to staff that irrespective of her fence being in the easement there were other obstructions within the private easement and she claimed her fence was no more obstructing than landscape features put in the 50 foot wide total private easement by other property owners. He showed on the overhead projector and submitted into evidence the section of the IRC code indicating that if a fence was in an easement a majority of the easement interest holders needed to sign off on it, and showed a letter he had written to the Respondent advising either the fence had to be removed out of the easement with a

permit or she would have to get authorization of the easement holders in order to keep it where it was.

Mr. DeBlois recommended the Board find the violation and require the Respondent to get a fence permit either through a fence covenant approval agreement to keep it in the private easement or relocate the fence out of the easement and comply with the conditions of the permit, and grant approximately 60 days, until July 25, 2015 for compliance or a \$100 per day fine be imposed.

Respondent Cynthia Cioffi explained the road was 10 to 12 feet wide even though the legal easement was 50 feet wide and her fence did not inhibit any use whatsoever by other residents; however she had an unhappy neighbor and felt it was a civil matter that should be pursued in the courts. She maintained County Code Enforcement had no jurisdiction on the private roadway as to where the fence was located. The Respondent said she had previously had the property and road surveyed and it was determined that her fence was further away from the center of the road than many things the neighbors had and it was the surveyor's professional determination that 85% of the other properties had something in the easement.

Discussion followed.

11:35:16

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Petrulak, the Board voted unanimously (6-0) to find the violation and grant an extension of 60 days, until July 25, 2014, for compliance or a possible \$100 per day fine.

It is noted for the record the Respondent was present for this hearing.

Chairman Clements called a recess at 3:15 p.m. and reconvened the meeting at 3:20 p.m.

LIEN RELEASE REQUESTS

11:38:18 **Case #2010060001 – Charles & Alice Lee**

Mr. DeBlois recalled this case originally came to the Board on July 26, 2010, at which time the Board entered an Order requiring the Respondents to obtain an after-the-fact building permit for an unpermitted storage shed and modify the structure in accordance with the permit or remove the structure. He continued there

were a number of extensions granted which led to a compliance hearing held on June 27, 2011 at which time upon hearing nothing had been done the Board entered an Order Imposing Fine of \$100 per day with a start date of June 25, 2011.

Ms. Betty Davis, IRC Code Enforcement Officer, advised the last time she had gone to the property to check for compliance was the week before the final compliance hearing on June 25, 2011 and a section of the roof was still there; however the Respondent stated the structure had been removed before the compliance date, which she was not aware of.

Mr. Bernard Lee, representing the Respondents, testified under oath that he had torn down the structure before the compliance date of June 25, 2011.

Mr. DeBlois recommended the Board acknowledge compliance and rescind the fine.

11:44:03

ON MOTION BY Mr. Petrulak, SECONDED BY Mr. Gervasio, the Board voted unanimously (6-0) to find compliance and rescind the fine.

It is noted for the record the Respondent's representative was present for this hearing.

11:45:29 **Case #2009110010 - Jose Sibilly (Bank of New York)**

Mr. DeBlois summarized this case had originally been to the Board on November 23, 2009 for junk, trash and debris violation and both Jose Sibilly and the Bank of New York had been cited as Respondents. The Board had directed the Respondents to comply by December 28, 2009, and when it came back for a compliance hearing on January 25, 2010 after hearing nothing had been done the Board entered a \$100 per day fine with a start date of December 29, 2009.

Inspector Carter Solomon confirmed compliance sometime in 2011; however she had no specific date as to exactly when compliance had been attained.

Mr. DeBlois conservatively assumed the property had come into compliance in January, 2011, which was approximately one year, and estimated the flat fine would be \$36,500.

Ms. Tammy Bogart, representing the bank, stated the bank took possession of

the property on March 24, 2014 and the property was now under contract and scheduled to close at the end of May, 2014.

Mr. DeBlois recommended the fine be set at \$1,700 to cover administrative costs.

11:51:24

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Petrulak, the Board voted (4-2) to find compliance and set the fine at \$1,700 to cover administrative costs. Mr. Myers and Mr. Zimmermann opposed.

It is noted for the record the bank's representative was present for this hearing.

11:51:56 **Case #2008050177 – Jose Sibilly**

Mr. DeBlois related this case involved the same property and the same Respondents as the previous case and had to do with an overgrown weeds violation that originally came to the Board on July 28, 2008. He continued the Board granted until August 22, 2008 to comply, and on August 25, 2008 upon learning nothing had been done the Board entered an Order Imposing Fine of \$100 per day with a start date of August 23, 2008. Mr. DeBlois confirmed compliance had been verified on October 14, 2009, which was a passage of 417 days from the start date of the fine for a flat fine in the amount of \$41,700.

Inspector Carter Solomon testified the property was currently in compliance but there had been some recurrence of the violation since the initial notice.

Ms. Tammy Bogart, representing the bank, stated the house was now under contract and estimated the approximate value of the property was \$26,000.

Mr. DeBlois noted the property had not been cited for a repeat violation but there had been an issue of compliance being maintained; however coupled with the previous case the total fine for the two cases would be \$3,400, which was more than 10% of the value of the property. He recommended the fine in this case be set at \$1,700 to cover administrative costs.

11:56:32

ON MOTION BY Mr. Bowles, SECONDED BY Mr. Gervasio, the Board voted (5-1) to find compliance and set the fine at \$1,700 to cover administrative costs. Mr. Myers opposed.

It is noted for the record the bank's representative was present for this hearing.

EVIDENTIARY HEARINGS

11:57:08 **Case #2014030032 – Synergy Orlando One Inc.**

Mr. DeBlois advised this case had to do with junk, trash and debris and undercarriage skirt violations on a vacant mobile home at a mobile home park owned by the Respondent.

Inspector Buck submitted one photograph taken on May 7, 2014 into evidence and confirmed service by certified mail on May 12, 2014. She related an attempt had been made to install skirting and the Respondent had asked for an extension of time to complete the necessary work.

Mr. DeBlois recommended an extension of 30 days, until June 20, 2014, for compliance.

11:59:08

ON MOTION BY Mr. Petrulak, SECONDED BY Mr. Zimmermann, the Board voted unanimously (6-0) to find the violations and grant an extension of 30 days, until June 20, 2014, for compliance or a \$100 per day fine.

It is noted for the record the Respondent was not present for this hearing. .

11:59:30 **Case #2014030071 – Vincent Valenti**

Inspector Carter Solomon submitted an Affidavit of Service indicating the property had been posted on May 9, 2014 and five photographs into evidence, and stated the property had been cited for property maintenance violation and junk, trash and debris. She described a partially destroyed structure on vacant property and mentioned the IRC Building Department had started condemnation proceedings on

the site. Inspector Carter Solomon recommended an extension of 30 days, until June 20, 2014, to resolve the junk, trash and debris violation and 60 days, until July 25, 2014, to resolve the property maintenance violation by demolishing the structure or be subject to a \$100 per day fine.

12:00:59

ON MOTION BY Mr. Zimmermann, SECONDED BY Mr. Myers, the Board voted unanimously (6-0) to find the violations and grant an extension of 30 days, until June 20, 2014, for compliance of the junk, trash and debris violation and 60 days, until July 25, 2014, to demolish the structure or a \$100 per day fine.

It is noted for the record the Respondent was not present for this hearing.

12:01:12 **Case #2014050001 – Robert & Eileen Morris**

Inspector Carter Solomon advised there was no service on this case.

12:01:28 **Case #2013010229 – Davis Temple Church of God in Christ**

Mr. DeBlois related this case involved a church that had gone through a process for site plan approval for exterior grounds and parking improvements that had not been completed and the Respondent was cited for site plan non-conformance with the approved site plan.

Inspector Buck submitted an Affidavit of Service indicating the property had been posted on May 9, 2014 and four photographs into evidence. She testified she had spoken to the contractor this morning and he told her he was looking to be finished by sometime in August, 2014. Inspector Buck noted parking had been added on the west side of the property, a slab for handicapped parking had been installed, a sidewalk had been placed in front of the building but the landscaping, striping and parking in the rear still had to be done.

Mr. DeBlois indicated even though the church was not actively being used there was an approved site plan that was partially completed and there was still an obligation to complete the improvements in accordance with the approved plan. He recommended an extension of 90 days, until August 22, 2014, for compliance.

12:04:48

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Petrulak, to find the violation and grant an extension of 90 days, until August 22, 2014, for compliance or a \$100 per day fine.

Mr. Bowles noted a site plan had been approved but the property was not being used and he would have a hard time imposing a fine because the Respondent could not afford to install landscaping. He felt it would be different if construction was still ongoing and there were unsafe conditions and suggested doing nothing at this time.

Chairman Clements agreed and did not understand why the Board was hearing this case if there was still time left to do the work under the permit as he did not see how you could fine someone who had a permit.

Mr. DeBlois explained this was a staff-initiated action for a pending site plan that was partially constructed.

Mr. Gervasio withdrew his previous motion and Mr. Petrulak withdrew his second.

12:08:15

ON MOTION BY Mr. Gervasio, SECONDED BY Mr. Petrulak, the Board voted unanimously (6-0) to table this case at this time.

It is noted for the record the Respondent was not present for this hearing.

COMPLIANCE HEARINGS

12:09:00 **Case #2014020036 – Sheree Layne**

Inspector Carter Solomon submitted seven photographs into evidence and advised the Respondent in this case was deceased and her son was currently living in the residence. She recapped the case had initially come to the Board on March 24, 2014 for overgrown weeds and junk, trash and debris and she had met with the son but nothing had been done towards compliance. Inspector Carter Solomon indicated the neighbors had requested the property be declared a public nuisance warranting County abatement; however the IRC Health Department had not found any major issues.

Mr. DeBlois advised there would have to be a determination the property was a serious threat to public health, safety and welfare for it to warrant County abatement. He recommended the \$100 per day fine be imposed with a start date of May 17, 2014, adding staff would monitor the site for possible health and safety issues.

12:13:23

ON MOTION BY Mr. Petrulak, SECONDED BY Mr. Zimmermann, the Board voted unanimously (6-0) to find non-compliance and impose a \$100 per day fine with a start date of May 17, 2014.

It is noted for the record the Respondent's representative was not present for this hearing.

12:13:35 **Case #2014020131 – Keith Moskowitz**

Inspector Buck advised there was no service and the case would be rescheduled.

12:13:54 **Case #2014010070 – Henry Rodrigues**

Inspector Buck submitted an Affidavit of Service indicating the property had been posted on March 6, 2014 and one photograph taken on May 15, 2014 into evidence. She reported nothing had been done to comply with the overgrown weeds and junk, trash and debris violations and recommended a \$100 per day fine be imposed with a start date of May 17, 2014.

12:14:47

ON MOTION BY Mr. Zimmermann, SECONDED BY Mr. Bowles, the Board voted unanimously (6-0) to find non-compliance and impose a \$100 per day fine with a start date of May 17, 2014.

It is noted for the record the Respondent was not present for this hearing.

12:15:10 **Case #2013120020 – Bank of New York Mellon**

Mr. DeBlois indicated this case had to do with overgrown weeds, swimming pool maintenance and pool enclosure violations.

Ms. Rose Jefferson, IRC Code Enforcement Officer, confirmed the overgrown weeds had been taken care of; however as of today the pool enclosure and pool maintenance violations still existed. She recommended a \$100 per day fine be imposed with a start date of May 17, 2014.

12:16:40

ON MOTION BY Mr. Zimmermann, SECONDED BY Mr. Myers, the Board voted unanimously (6-0) to find non-compliance and impose a \$100 per day fine with a start date of May 17, 2014.

It is noted for the record the Respondent was not present for this hearing.

REHEARING REQUEST

12:17:08 **Case #2013120015 – Mary Jane Christiansen (Match.Com-Legal)**

Mr. DeBlois explained this case had been to the Board on February 24, 2014 and involved a Continuing Order to Match.Com for signs advertising a dating service in Sebastian. He advised staff originally had a problem identifying what company was involved and who had actually placed the signs, and had recommended the Board enter a Continuing Order against Match.Com as the parent company to the local Sebastian date service.

Mr. DeBlois continued the legal department of Match.Com objected to the Continuing Order and provided information that the local Sebastian dating company had no affiliation with Match.Com. He recommended the Board rescind the Continuing Order against Match.Com and if the issue arose again with the local company, staff would be more specific in identifying who was involved and issue citations directly to the responsible party.

12:19:44

ON MOTION BY Mr. Petrulak, SECONDED BY Mr. Zimmermann, the Board voted unanimously (6-0) to rescind the Continuing Order entered on February 24, 2014 against Match.Com.

It is noted for the record the Respondents were not present for this hearing.

12:20:31 **Authorization for Notices to Appear**

ON MOTION BY Mr. Zimmermann, SECONDED BY Mr. Petrulak, the Board voted unanimously (6-0) to authorize the Notices to Appear for cases leading up to the June 23, 2014 meeting.

Other Matters

There were none.

Adjournment

There being no further business, the meeting was adjourned at 4:04 p.m.