

CODE ENFORCEMENT BOARD MINUTES
Wednesday, February 10, 2016 – 2:00 p.m.
City Hall, Council Chambers, Vero Beach, Florida

PRESENT: Chairman, Kirk Noonan; Vice Chairman, Frank Pizzichillo; Members: Suzanne Shell, Jeffrey McGann, Stephen McDonald, Herbert Whittall, Christopher Bryant and Alternate Member #1, Eric Price **Also Present:** City Attorney, Wayne Coment; Code Enforcement Officer, Tom Ramsey; Code Enforcement Officer, Melody Sanderson; Indian River County Licensing Inspector, David Checchi and Deputy City Clerk, Sherri Philo

1. CALL TO ORDER

Today's meeting was called to order at 2:00 p.m.

2. PLEDGE OF ALLEGIENCE

The Chairman led the Board members and the audience in the Pledge of Allegiance to the flag.

The Deputy City Clerk swore in staff and members of the audience en masse.

3. PRELIMINARY MATTERS

A) Adoption of Minutes – January 13, 2016

Ms. Shell made a motion to adopt the minutes of the January 13, 2016 Code Enforcement Board meeting. Mr. Pizzichillo seconded the motion and it passed unanimously.

B) Agenda Additions, Deletions and Adoption

Mr. Tom Ramsey, Code Enforcement Officer, pulled item 5-B) 1b – Phyllis F. (Collins) Duffey from today's agenda. He reported that there is a new property owner and therefore he voided the citation and issued a new citation to the new property owner. He then pulled item 5-B) 1c - Betty Smith from today's agenda. He reported that Ms. Smith has started the permitting process and she did pay the initial civil penalty and enforcement costs. He said the Board would hear this case at their March meeting. He then pulled item 5-B) 1d – First Choice Healthcare, LLC/Dr. Neal Abarbanell from today's agenda. He reported that Dr. Abarbanell is out of town and filed a request that his case be heard at a later date.

Mr. Pizzichillo made a motion to adopt the agenda as amended. Mr. Whittall seconded the motion and it passed unanimously.

4. UNLICENSED CONTRACTORS/CITATIONS

None

5. EVIDENTIARY HEARINGS

A) Citation Appeals

1. CASE #15-CE-1747 / 1825

VIOLATOR: Kenn Davin

VIOLATION: Unlicensed contracting; failure to apply for a building permit

VIOLATION ADDRESS: 1602 36th Avenue, Vero Beach, Florida 32960

Mr. Checchi reported that on December 30, 2015 staff was notified that there was concrete being poured at 1602 36th Avenue. He observed at least four (4) people screening or pouring concrete from the cement truck forming a circular driveway inside a right-of-way without a City permit or a County building permit. He issued a Stop Work Order and spoke with Mr. Kenn Davin, violator, who stated that he called someone in the County and based on that conversation he determined that a permit was not required. Mr. Checchi said that no one at the Building Department recalls informing a caller that a permit was not required for driveway pours. It is standard procedure that a permit is to be issued for such work. He reported that he cited the homeowner, Mr. Kenn Davin, for concrete work without a permit and unlicensed contracting, as well as Mr. Jerry Yearwood for unlicensed contracting (case to be heard next on today's agenda). He asked the primary workers for their driver's license and Mr. Davin declined. Mr. Yearwood stated that he lost his wallet that morning and a third worker was told not to speak to anyone. He then contacted the Vero Beach Police Department to produce the driver's license. He reported that an after the fact permit was issued on December 31, 2016, but as of February 9, 2016 it had not been filed. He reported that Mr. Davin and Mr. Yearwood were present today to appeal their citations. He noted that Mr. Davin obtained an Owner/Builder Permit for the work being done, but the conditions for the permit is that the house has to be for the owner's own use and cannot be sold or rented for a period of one (1) year and the house is currently up for sale.

Mr. Kenn Davin said that he has been sworn in. He reported that on December 29th at 1:16 p.m., he called the Building Department and told a woman that he was replacing concrete on the existing driveway. She told him that she didn't think he needed a permit, but that he should speak with the Inspector. He called the Inspector and left an extensive message, the Inspector returned his call and left a message, but didn't state that a permit was needed. Mr. Davin said that he returned the Inspector's call the following morning at 8:57 a.m. and when he went in to get his permit he was told that their phone system was not working. He was told that "Rick" was the person who had called him. Mr. Davin said the reason that he put his home up for sale was because of this hassle and because he purchased another property. He did not know that he could not sell his home for one (1) year. He reported that he is licensed in every trade, but not in Florida. He said that he has owned the home for five (5) years and lives there part time. He gave the Board a copy of a picture that he printed from his phone showing the date and time that he called the Building Department from his cell phone (on file in the City Clerk's office).

Mr. Noonan asked were you repairing an existing driveway.

Mr. Davin answered yes. He explained that they were repairing it, but because the trees destroyed so much of the driveway they ended up taking it all out. He said it was at the end of the day when they were told to stop the work, which caused an entire truck of concrete being wasted and he still had to pay for it. He also had to pay for a hotel room because the men working for him were from Knoxville, Tennessee and the concrete plant wasn't open until the following Monday or Tuesday.

Mr. Checchi asked for clarification on the name of the Inspector. He questioned if they had the name correct.

Mr. Davin said he was told that Rick was the man who was on duty that day. He said that he has the message on his phone from the gentleman who called him back if they wanted to hear it.

Mr. Pizzichillo asked do you employ these workers on a regular basis.

Mr. Davin answered yes.

Mr. Pizzichillo asked who told the workers not to provide their driver's license.

Mr. Davin said that he was not sure if they had to produce their driver's license and that he wanted to get in touch with his attorney first.

Mr. Pizzichillo asked what is the current condition of the property.

Mr. Davin said a permit was issued and the work is complete. He reported that the City Inspector came out and said it was okay.

Mr. Pizzichillo asked him what he needed from the Board.

Mr. Davin said if he had known that he needed a permit he would have got one. He noted that he did get the permit the following day.

Mr. Pizzichillo asked Mr. Davin because he is in the construction business in another state, wouldn't it be reasonable to assume that he would need a license to do the work.

Mr. Davin said in Knoxville, if they replace an existing as is a permit is not needed.

Mr. Pizzichillo said by Mr. Davin's own admission, he took out all the concrete.

Mr. Davin said they replaced it exactly as it was.

Mr. Pizzichillo said if you are in the business then you generally should know what the laws are in every state.

Mr. Davin said that he called the Building Department and asked if a permit was needed if he was replacing the driveway as it was. He said that he pulled a permit for everything else that he did on the house.

Mr. Bryant asked did you pour any additional concrete other than what was taken out.

Mr. Davin said they might have curved it a little larger because they were asked to and put asphalt down by the edge.

Mr. Checchi said there is very little change, if any, to the footprint, which is not an issue.

Mr. Davin asked the Board if they wanted to hear the message the Inspector left on his cell phone.

Mr. Bryant asked Mr. Davin if he has been coming to Florida for the past five (5) years or if he has been coming to Florida all of his life.

Mr. Davin answered just for the past five (5) years.

Mr. Noonan asked was the permit issue resolved.

Mr. Checchi answered not to his knowledge. He checked yesterday and final inspection was not done.

Mr. Davin said the City came out and did the inspection.

Mr. Checchi said that was probably for the right-of-way, but the County needs to do a final inspection on the driveway.

At this time, Mr. Davin played back the message from the Building Department that was saved on his phone.

Mr. Bryant asked who was the Planning Examiner working on December 29th.

Mr. Checchi said the message could have been from any one of their Inspectors, but he doesn't know a "Rick".

Mr. Noonan made a motion that the Board finds that because there was some miscommunication and because the permit issue has presumably been resolved, that the Board uphold the unlicensed contracting citation, but not to uphold the construction without a permit citation (fine reduced from \$1,000 to \$500).

Mr. Pizzichillo asked Mr. Noonan to amend his motion to add that he (Mr. Davin) complete the permitting process by having a final inspection.

Mr. Noonan amended his motion to add with the caveat that a final inspection be done. Mr. McGann seconded the motion and it passed unanimously.

2. **CASE #15-CE-1748 / 1827**
VIOLATOR: Jerry Yearwood
VIOLATION: Unlicensed contracting
VIOLATION ADDRESS: 1602 36th Avenue, Vero Beach, Florida
32960

Mr. Jerry Yearwood said the person who was working for Mr. Davin was his nephew and he came down to help him. He reported the he was asked to break up the concrete and haul it off. He said that he was not contracted.

Mr. Noonan asked Mr. Yearwood if he came here at his own expense.

Mr. Yearwood answered yes. He came over to give his nephew a hand. He didn't know Mr. Davin at all.

Mr. Pizzichillo said because there has been a resolution to the previous case and this seems to him to be part of the same case. He felt they should let Mr. Yearwood off the hook because he was only helping. He said that he was prepared to make a motion.

Mr. Wayne Coment, City Attorney, noted that they need to hear from Mr. Checchi.

Mr. Checchi did not have any comments.

Mr. Pizzichillo made a motion that the Board dismisses the citation of unlicensed contracting. Mr. Bryant seconded the motion and it passed unanimously.

B) Non-Compliance / Compliance Reports

1. Request for Board Order

- a. **CASE #15-CE-1146 / 787M**
VIOLATOR: Francisco Flores (Guzman)
VIOLATION: Fence installed without code compliance from the City of Vero Beach Planning and Development Department or a building permit from the Indian River County Building Department
VIOLATION ADDRESS: 3 Lamplighter Lane, Vero Beach, Florida 32960
(Paid \$50.00 Civil Penalty)
(Case was Continued from the December 9, 2015 & January 13, 2016 Hearing)

Ms. Melody Sanderson, Code Enforcement Officer, reported that the property was brought into compliance on January 21, 2016.

Mr. Coment noted that the civil penalty in the amount of \$50.00 has been paid. He asked Ms. Sanderson if she was asking for enforcement costs.

Ms. Sanderson answered no.

Mr. Noonan made a motion that the Board finds there was a violation and that the violation has been corrected as of January 21, 2016. Mr. Whittall seconded the motion and it passed unanimously.

- b. CASE #15-CE-6189 / 0840T**
VIOLATOR: Phyllis F. (Collins) Duffey
VIOLATION: Grass, weeds, and undergrowth in excess of 12 inches
VIOLATION ADDRESS: 1455 15th Avenue, Vero Beach, Florida 32960

This item was pulled from today's agenda.

- c. CASE #15-CE-6204 / 0818T**
VIOLATOR: Betty Smith
VIOLATION: Reroof and fascia work without a permit
VIOLATION ADDRESS: 1745 41st Avenue, Vero Beach, Florida 32960
(Paid \$50.00 Civil Penalty)
(Case Continued from January 13, 2016 Hearing)

This item was pulled from today's agenda.

- d. CASE #15-CE-6009 / 742T**
VIOLATOR: First Choice Healthcare, LLC; Dr. Neal Abarbanell
VIOLATION: Weeds, grass, and undergrowth in excess of 12 inches; unlicensed/inoperable vehicle
VIOLATION ADDRESS: 1867 20th Avenue, Vero Beach, Florida 32960

This item was pulled from today's agenda.

- e. CASE #15-CE-6060 / 752M**
VIOLATOR: Venetian Apartments/Kraig Vann Pyle
VIOLATION: Construction without a permit
VIOLATION ADDRESS: 2545 Indian River Boulevard, Vero Beach, Florida 32960

Ms. Sanderson reported that this case was previously heard before the Board on December 9, 2015 for construction of railing on the second floor balcony without a permit. The Board allowed the violator 60 days to correct the violation (February 5, 2016). She reported that the

Building Department has been unable to accept a permit application as the plans have to be engineered. An Engineer has been hired, but is 30 days out of drawing up the plans.

Ms. Catherine Ergle said that she was sworn in. She submitted into the record a copy of a letter from the Engineer, Mr. Todd N. Smith (on file in the City Clerk's office).

Mr. Bryant asked is something there for safety.

Ms. Ergle answered yes. She said it is completely safe.

Ms. Sanderson asked the Board to allow another 60 days to come into compliance by completing the permitting process. She suggested that they order the compliance date of April 8, 2016, the Friday prior to the April 13, 2016, Code Enforcement Board meeting.

Mr. Pizzichillo made a motion that the Board continues this case to the April 13, 2016 Code Enforcement Board meeting with the correction date of April 8, 2016. Ms. Shell seconded the motion and it passed unanimously.

- f. **CASE #15-CE-6145 / 0798T**
VIOLATOR: Samuel W. and Kim High
VIOLATION: Property is overgrown in excess of 12" and has a large tree dead that has fallen onto the lot
VIOLATION ADDRESS: 1925 22nd Avenue, Vero Beach, Florida 32960

Mr. Ramsey requested that the Board issues a Board order to correct the violation, to pay the initial \$100.00 civil penalty, continuing penalties of \$100.00 per day, and the cost of enforcement in the amount of \$68.25. He reported that this case was initiated months ago and he was contacted by the attorney for the estate who requested an extension. Since that time he has not heard from the attorney and the telephone number he has is no longer in service. Mr. Ramsey reported that this is a repeat violation.

Mr. Noonan made a motion that the Board finds there is a violation, that it is a repeat violation, that the violation continues, and that the Board issue an order to pay the initial \$100.00 civil penalty, the cost of enforcement in the amount of \$68.25, and continuing penalties of \$100.00 per day commencing on November 17, 2015, the day after the correction date, and to correct the violation. Mr. Pizzichillo seconded the motion and it passed unanimously.

- g. **CASE #15-CE-6246 / 793M**
VIOLATOR: Judith Trage
VIOLATION: Weeds, grass, or undergrowth at a height of more than 12 inches; dead tree in the back yard; garbage and trash in the back and front yards; non-operable vehicle in the front yard
VIOLATION ADDRESS: 1030 27th Street, Vero Beach, Florida 32960

Ms. Sanderson reported that the citation that was issued on December 11, 2015 was returned and therefore the property was posted on December 30, 2015. She reported that the violation of a non-operable vehicle was corrected as of December 30, 2015 and the violation of weeds, grass, or undergrowth at a height of more than 12 inches was corrected as of January 27, 2016. She reported that the violation of the dead tree in the back yard remains in violation. She reported that the civil penalty in the amount of \$50.00 has not been paid. There is no cost of enforcement. She requested that the Board issue an order to pay the initial \$50.00 civil penalty and continuing penalties of \$50.00 per day until corrected.

Mr. Pizzichillo made a motion that the Board issues an order finding the property in violation, to pay the initial civil penalty in the amount of \$50.00 and continuing penalties of \$50.00 a day commencing December 29, 2015.

Mr. McGann asked Ms. Sanderson if she has been in contact with the property owner, Ms. Judith Trage.

Ms. Sanderson reported that she has not been in contact with Ms. Trage, but according to the people living in the home there is a local man who collects the rent. She said when she posted the property she asked the people living in the home to notify the person who collects the rent that the citation needed to be acted on.

Mr. McGann thought that he knew the property owner stating that her husband was a realtor.

Ms. Sanderson thought Mr. McGann was speaking of the property owner's son. She asked Mr. McGann if the man he was speaking of was an auctioneer.

Mr. McGann answered yes.

Ms. Sanderson said that she did some research and linked his name to her name through Attorney Fromang. She called him requesting a good address and was told that there was no way for him to provide this information.

Ms. Shell asked who corrected the other violations.

Ms. Sanderson said the gentleman who is living in the home. She reported that the automobile belonged to someone else and it was removed from the property.

Mr. Pizzichillo asked is sending the citation by certified mail sufficient to prove that notice was served.

Mr. Coment answered no. He explained that when certified mail comes back unclaimed or undeliverable the Code Officer then posts the property and sends the citation by regular mail and enters into the record an affidavit of posting, which then makes it sufficient notice.

Mr. Pizzichillo asked was the citation that was sent by regular mail returned.

Ms. Sanderson answered no.

Mr. Noonan stated that the motion on the floor is that the Board finds that there were three (3) violations on the property; a derelict vehicle, weeds, grass and undergrowth over 12 inches and a dead tree, that the violations of a derelict vehicle and weeds, grass, and undergrowth have been corrected and the dead tree in the back yard remains in violation, therefore the Board issues an order finding partial compliance, to correct the violation of the dead tree, to pay the initial civil penalty of \$50.00, and continuing penalties of \$50.00 per day (commencing on December 29, 2016). The motion was seconded and it passed unanimously.

- h. CASE #15-CE-6227 / 0851T**
VIOLATOR: David M. Millner
VIOLATION: Operation of a business entity without issuance of a business tax receipt
VIOLATION ADDRESS: 726 Hibiscus Lane, Vero Beach, Florida 32963

Mr. Ramsey reported that the violation has been corrected and the civil penalty in the amount of \$50.00 has not been paid.

Mr. David Millner, violator, asked Mr. Ramsey what entity was being cited.

Mr. Ramsey reported that there were two (2) entities at this location and he cited the David Millner Group.

Mr. Millner said that is not the one he received. He said then that makes sense.

Mr. Noonan made a motion that the Board issues an order to pay the initial \$50.00 civil penalty. Mr. Pizzichillo seconded the motion and it passed unanimously.

Mr. Ramsey reported that there is no cost of enforcement.

- i. CASE #15-CE-6276 / 0871T**
VIOLATOR: Titone Properties, LLC / Mark Titone
VIOLATION: Extensive trash and debris accumulated along rear property line and drainage area
VIOLATION ADDRESS: 1926 40th Avenue, Vero Beach, Florida 32960

Mr. Ramsey reported that there is a significant amount of trash throughout the property and the civil penalty in the amount of \$50.00 has not been paid. There is a cost of enforcement in the amount of \$62.03. He requested that the Board issues an order of continuing penalties. He reported that the citation was sent by certified mail, which was returned and therefore he posted the property.

Mr. Noonan made a motion that the Board finds there is a violation, that the violation continues, that the Board issues an order to correct the violation, to pay the initial

\$50.00 civil penalty, the cost of enforcement in the amount of \$62.03, and continuing penalties in the amount of \$50.00 a day commencing on January 29, 2016. Mr. Pizzichillo seconded the motion and it passed unanimously.

- j. CASE #15-CE-3315 / 0864T**
VIOLATOR: Andrew F. Zaleski
VIOLATION: Home occupation without active business tax receipt; parking and signage of vehicle
VIOLATION ADDRESS: 1912 26th Avenue, Vero Beach, Florida 32960

Mr. Ramsey reported that the violation remains and the civil penalty in the amount of \$50.00 has not been paid. He reported that the property was posted, which was removed within one hour of being posted. He said the violation of parking and signage of the vehicle has been corrected.

Mr. Noonan made a motion that the Board issues an order to come into compliance by Mr. Andrew Zaleski obtaining his business tax license and to pay the initial civil penalty of \$50.00.

Mr. Coment asked Mr. Ramsey if he was requesting continuing penalties.

Mr. Ramsey answered no.

Mr. Pizzichillo seconded the motion and it passed unanimously.

6. OLD BUSINESS

None

7. ADMINISTRATIVE MATTERS

None

8. CLERK'S MATTERS

None

9. ATTORNEY'S MATTERS

None

10. CHAIRMAN'S MATTERS

None

11. MEMBER'S MATTERS

None

12. ADJOURNMENT

Today's meeting adjourned at 3:00 p.m.

/sp