

CODE ENFORCEMENT BOARD MINUTES
Wednesday, January 8, 2020 – 2:00 p.m.
City Hall, Council Chambers, Vero Beach, Florida

PRESENT: Chairman, Kirk Noonan; Vice Chairman, Linda Hillman; Members: Eric Price (arrived at 2:04 p.m.), Christopher Bryant, Frank Pizzichillo, Stephen McDonald, Richard Kennedy, and Alternate Member #1, Ken Daige **Also Present:** City Attorney, John Turner; Code Enforcement Officer, Melody Sanderson and Deputy City Clerk, Sherri Philo

Excused Absence: Sharon Gorry

1. CALL TO ORDER

The Chairman called today's meeting 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 all witnesses present for today's hearing en masse.

3. PRELIMINARY MATTERS

A) Adoption of Minutes – December 11, 2019

*Please note that this item was heard after item 3-B).

Mr. Hillman made a motion to adopt the minutes of the December 11, 2019 Code Enforcement Board meeting. Mr. Pizzichillo seconded the motion and it passed unanimously.

B) Agenda Additions, Deletions and Adoption

Ms. Melody Sanderson, Code Enforcement Officer, pulled Case #19-CE-10539 – FQSR RE II, LLC; dba KBP Foods / Rachel Blevens and Case #19-CE-10496 – Danny M. Bennett; Elizabeth R. Bowler (owners) and Karl Taylor (Realtor) from today's agenda. She reported that both cases are in compliance and the civil penalties have been paid.

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

4. UNLICENSED CONTRACTORS/CITATIONS

None

5. EVIDENTIARY HEARINGS

A) Citation Appeals

1. **CASE #19-CE-10541 / 2230M**
VIOLATOR: Cheryl Sangbush
VIOLATION: Operating a guest house and transient quarters in a residential zone
VIOLATION ADDRESS: 4890 Bethel Creek Drive, #4, Vero Beach, Florida 32963

Ms. Sanderson reported that this is a repeat violation. Service of the citation was provided by property posting. This case is being heard today as an appeal.

Ms. Cheryl Sangbush, Property Owner, reported that she is in the real estate industry and has been selling real estate in Indian River County for about 15 years. She took full responsibility of the first citation and immediately paid the \$500 civil penalty. She reported that she is now in complete compliance and is renting at the 30-day minimum. She said there was an issue when she made the changes to the site in that she used her I-Phone rather than her computer because she was out of town and the settings are a little different. She reported that the entire month of December had been rented except for two (2) days and at the time she received this citation that the site was still showing a minimum rental of three (3) days. She thought that she was in compliance, but because the site showed three (3) days minimum rental in December she was not in compliance with the City. She is contesting this citation as she is now in complete compliance.

Ms. Sanderson reported that the citation was issued based on her conversation with a guest who advised her that they rented the home for one (1) week.

Mr. Kennedy asked if they were now in compliance.

Ms. Sanderson reported that the tenants have left.

Mr. Daige asked Ms. Sanderson how she monitors the property to ensure that they stay in compliance.

Ms. Sanderson reported that she checks the advertising, interviews guests, and watches the vehicle turnover.

Mr. Daige asked in December, was the property rented by the day or by the month.

Ms. Sanderson said there were several rentals.

Mr. Daige asked about the month of December.

Ms. Sanderson reported that one (1) citation was in November and one (1) citation was in December.

Mr. Pizzichillo asked Ms. Sangbush in that period of time, how many rentals did she have that were less than 30-days.

Ms. Sangbush reported that she listed the property on Airbnb in the summer and had it on for a three (3) day minimum since June, 2019.

Mr. Pizzichillo asked how many times was it rented for less than 30-days from June through the present time.

Ms. Sangbush reported that she had almost 100% occupancy.

Ms. Sanderson reported that based on the reviews in their backup information, there were four (4) or five (5) rentals per month.

Mr. Pizzichillo asked Ms. Sangbush if she was aware of the Ordinance.

Ms. Sangbush answered yes.

Mr. Bryant asked how many times was she a repeat violator.

Ms. Sanderson reported that this is her second violation. The first citation was issued in November with a \$500 civil penalty, which was paid on December 10, 2019. This citation is the second violation with a \$500 civil penalty based on the week. She noted that per City Code, it should be \$500 per night.

Mr. Daige asked Ms. Sanderson for her recommendation.

Ms. Sanderson said that the citation should stand.

Mr. Pizzichillo questioned at what citation amount.

Ms. Sanderson answered \$500 plus enforcement costs.

Mr. Pizzichillo made a motion that Ms. Sanderson's recommendation be put into a motion and voted upon the Board, up or down. Mr. McDonald seconded the motion.

Mr. John Turner, City Attorney, encouraged the Board to make sure there is no more discussion before they entertain a motion.

Ms. Sangbush said that she is in compliance. She said that she has been in compliance since the date of the first letter and the first citation. She said in going forward she understands that this is to be taken seriously. She said that she does not have a problem with renting for a 30-day minimum and that she is in compliance moving forward.

Mr. McDonald said she is only being cited for one (1) day (\$500).

Ms. Sanderson said that is correct.

Mr. Pizzichillo made a motion that the appeal be denied and that the original amount stand.

Ms. Sanderson said that she would ask that the Board finds that there was a violation, that the property is now in compliance and to issue a Board order for the initial \$500 civil penalty and the \$79.64 enforcement costs.

Mr. Pizzichillo put those exact words into his motion (that the Board finds that there was a violation, the violation has been corrected, and issues a Board order to pay the \$500 civil penalty along with the cost of enforcement in the amount of \$79.64). Mr. Bryant seconded the motion and it passed unanimously.

B) Non-Compliance / Compliance Reports

1. Request for Board Order

- a. CASE #19-CE-10496 / 2215M**
VIOLATOR: Danny M. Bennett; Elizabeth R. Bowler (owners) and Karl Taylor (Realtor)
VIOLATION: Sign violation – Code Section 38.09 (f)
VIOLATION ADDRESS: 902 Tides Road, Vero Beach, Florida 32963
(Failure to comply; Failure to pay \$50 civil penalty)

This item was pulled from today's agenda.

- b. CASE #19-CE-10509 / 2218M**
VIOLATOR: Frances Cappelen
VIOLATION: Failure to obtain Code Compliance Certification or a building permit for concrete driveway and concrete wall – Code Sections 64.05 (a)(b)(9)(a); 22-106; 22-181
VIOLATION ADDRESS: 2511 Atlantic Boulevard, Vero Beach, Florida 32960
(Failure to comply)

Ms. Sanderson reported that the violation has not been corrected and the civil penalty has been paid. She reported that she spoke with Mr. Cappelen yesterday and they came to an agreement that he could complete the permit process within 45 days. She asked that the Board finds there is a violation, the violation continues, that the civil penalty has been paid and to issue a Board order to correct the violation within 30-days.

Mr. Pizzichillo asked Ms. Sanderson for her recommendation.

Ms. Sanderson recommended a Board order to correct the violation within 45-days.

Mr. Pizzichillo put that in the form of a motion. Mr. Kennedy seconded the motion.

Mr. Noonan asked if it is okay if he made a motion.

Mr. Pizzichillo withdrew his motion.

Mr. Turner said that he would prefer that when they do have a motion that they state it as clearly as they can and then ask for a second. He said if Mr. Pizzichillo wants to withdraw his motion he can do that, but he would request that they state exactly what the motion is from the dais.

Mr. Pizzichillo said his thinking is that he gets a recommendation from the person making the citation and he doesn't want to misquote her so whatever her words are, if he is happy with them, he would like to put them exactly into his motion, which is why he does it the way he does it.

Mr. Turner said that he would suggest when they submit a motion for consideration, that they state the motion and then they can ask staff if that is what has been recommended. He said this is for clarification so they know exactly what the Board has done and what has been voted on. He said Parliamentary Procedure usually requires that the motion be made from the dais or from the body who is meeting. That is the reason why he is bringing this up. He understands Mr. Pizzichillo's concerns about wanting to make sure that everything is in the motion. He would just suggest that once they make the motion they could ask in substance what the recommendation is. That is his recommendation to the Board.

Mr. Pizzichillo again withdrew his motion.

Mr. Noonan made a motion that the Board finds there is a violation, the violation continues, and that the Board issues a Board order to correct within 45-days and if the violation is not corrected continuing civil penalties shall commence beginning on December 6, 2019. Mr. Pizzichillo seconded the motion and it passed unanimously.

c. CASE #19-CE-10511 / 2220M

VIOLATOR: P. Scott McCracken

VIOLATION: Weeds, grass, and undergrowth at a height of more than 12 inches – Code Section 38-31 (a)(b)(1)

VIOLATION ADDRESS: 2716 Laurel Drive, Vero Beach, Florida 32960

(Failure to comply; Failure to pay \$100 civil penalty)

Ms. Sanderson reported that this repeat violation. Service of the citation was provided by posting of the property and by first class mail to the property owner's residence. The violation was corrected three (3) weeks after the compliance date and the civil penalty has not been paid. She asked that the Board finds that there was a violation, the property is now in compliance, and that the Board issues a Board order to pay the \$100 civil penalty and the cost of enforcement in the amount of \$33.44.

Mr. Kennedy said that he has seen this name (Mr. P. Scott McCracken, Violator) many times. He asked Ms. Sanderson if she speaks to him.

Ms. Sanderson said as many citations as he has had at this property and his other property, he has never acknowledged a citation, attended a hearing, or responded to her.

Mr. Kennedy asked Mr. Turner what remedy does the Board have. He said this makes a farce out of this Board.

Mr. Turner said the fine and lien system is what they have. He said they could exercise all the authority granted under the Ordinance and proceed that way.

Mr. Daige said it was stated that there are other fines. He said this citation has a \$100 civil penalty, plus costs.

Ms. Sanderson explained that the \$100 civil penalty on this citation is because it is a repeat violation.

Mr. Daige asked are there any unpaid penalties besides this one.

Ms. Sanderson answered yes.

Mr. Daige asked because this seems to be a problem, going forward, what is the possibility of enacting a lien against this property.

Mr. Turner explained that the procedure for citations are a little different than notices. He said they have had a problem in trying to get some enforcement on citations. His recommendation is that through the citation system, if there is a remedy for filing a lien on the property that they proceed in that direction if that is an available remedy. He said that is the only way they are actually going to collect anything.

Mrs. Hillman said if a lien is put against the property and they want to sell it, the lien would have to be paid.

Ms. Sanderson said that is her understanding.

Mr. Daige said to his knowledge the lien would stay with the property, it would accumulate penalties over the years, and they would catch it during a title search and it would either get paid or they would negotiate it. He asked Mr. Turner, if it is not in place now, if he would look into the paperwork that needs to be done so when this happens again it could be enacted.

Mr. Turner said that he and the Deputy City Clerk would get back to the Board with a recommendation.

Mr. Pizzichillo asked when did this problem begin.

Ms. Sanderson asked if he was referring to this case.

Mr. Pizzichillo said any case that this violator has not paid.

Mr. Bryant asked for the date of the very first time she was at this site.

Ms. Sanderson said that she initiated a case on April 10, 2019, for a different violation.

Mr. Pizzichillo asked if it was paid.

Ms. Sanderson said not to her knowledge.

Mr. Pizzichillo asked does the City go in and cut the grass and do whatever they have to do to make it healthy.

Ms. Sanderson reported that the violation has been corrected.

Mr. Pizzichillo asked Mr. Turner for his recommendation.

Mr. Turner said under the Code, a citation for a Code violation or a citation resulting from a Notice of Hearing can be filed, but it is not a lien and it is not giving notice of a lien. He said they need to take an additional step and make it a lien. He is hoping to contribute on how that process will be done. Normally the process is one of advising, giving notice to the owner that certain actions will be taken on the property for code violations and they are to appear before the Board and if they appear and are found in violation or if they do not appear after being given notice and an opportunity to be heard, then a lien would be filed. So, they would give the violators notice and an opportunity to appear. He said once they have complied with due process then there are some options the Board can take, which is what he is researching.

Mr. Pizzichillo said if he understands it correctly, the Board could make a motion that Mr. Scott McCracken should be served a notice or action for his violations and also give Mr. McCracken the opportunity to appear before the Board in writing and if not then they can proceed with a lien. He asked if that is correct.

Ms. Sanderson asked haven't they already done that by noticing him with the citation. She said that Mr. McCracken opted to ignore it and then he had written Notice of Hearing and was given the option to appear today if he wanted to make a compelling case.

Mr. Daige said with the lien situation, in hearing the City Attorney speak, staff needs to look into the paperwork and put some type of policy in writing that the Board can have so if the property is going to be liened, it will be done according to when Mr. Turner brings back the paperwork.

At this time, the Board discussed the lien process and how to make it stronger. It was agreed by the Board to allow Mr. Turner time to research this and bring back his recommendations.

Mr. Turner said that he would research this. He said that he is going to look for what would the law recognize and what they are authorized to do under the Ordinance and under State Statute.

Mr. Pizzichillo said that he is under the impression that they have sent several notices in the past. He asked is that correct.

Ms. Sanderson said there have been prior violations with notices issued.

Mr. Pizzichillo asked when they send a notice on this case, because the violator did not show up, that they put "final notice before further action is taken," which might stimulate some movement.

Ms. Sanderson said they can't do that because at today's hearing when the Board finds that the violator is in compliance and issues a Board order to pay, the violator has to receive that notice so they can't just immediately go to that action.

Mr. Turner said there is notice on there, but his problem is what are they allowed. He said first they have to give notice, they have to give the violator the opportunity to be heard, etc.

Mr. McDonald said there is language in the document about fees, penalties, etc.

Mr. Pizzichillo asked Ms. Sanderson to her knowledge, how many citations in the past has Mr. McCracken had.

Ms. Sanderson said there was a citation on April 10, 2019, for interior demolition and windows without a permit.

Mrs. Hillman asked did he pay the civil penalty.

Ms. Sanderson said not to her knowledge.

Ms. Sanderson reported that there was another case on the property in that timeframe for having a dumpster and construction trailer on the site without a current building permit.

Mr. Pizzichillo questioned that he (Mr. McCracken) didn't pay for that either.

Ms. Sanderson answered not to her knowledge.

Mr. McDonald asked is this on the same property.

Ms. Sanderson answered yes.

Ms. Sanderson reported there was a previous citation for overgrowth.

Mrs. Hillman said that is four (4) citations including today's case. She asked if any of them have been paid.

Ms. Sanderson said not to her knowledge.

Mr. Daige said they are looking at today's case and questioned what about the previous fines that have not been paid. He asked how is that handled.

Mr. Pizzichillo suggested that the Board ask the City Attorney to write a very serious letter to Mr. McCracken.

Mr. Turner said that he did not feel comfortable doing that. He would rather Mr. McCracken deal with Code Enforcement. He said if it comes to the point that staff feels the Board can direct them for lien purposes and filing suit foreclosing, that is the ultimate.

Mr. Pizzichillo asked how many more times does the Board have to sit at the dais and put up with these events of non-payment. He said somewhere along the line they may lose their patience and his patience is up.

Mr. Daige said they don't have the amount of fines against this property.

Mr. Noonan said the Board does not have the capability to roll everything together. He said each case is individual.

Mr. Turner asked what actions has the Board taken in the past.

Mr. Noonan said past cases were always in the past and not relevant to the case at hand.

Mr. Turner said that is correct. Every case is treated individually on its own facts and merits. He asked the Board how they handled a case where they had someone with a lot of back fines that were never paid and feel that they are immune from any kind of serious action from the Board or from Code Enforcement.

Ms. Sanderson pointed out that when the Board issues a Board order, there is verbiage on the order that states in part that it is going to include the costs of satisfying and recording releases of the resulting lien upon payment. So, it is not a surprise that the properties are liened.

Mr. Turner that is fine, but the Board needs to take that information and direct that liens be filed, direct that they be foreclosed on, etc.

Mr. Noonan asked when the Board order is recorded, doesn't that become a lien.

Mr. Turner said they are discussing citations.

Mr. Kennedy asked can the Board expand on that and state that no further permits will be issued to this contractor or to anyone.

Mr. Turner said that question was previously asked and he did some research on it and the answer is maybe.

Mr. Price said they could report the fact that Mr. McCracken owes money to the City to the Licensing Board and the Licensing Board can revoke his license.

Mr. Turner said that is correct; that is their remedy.

Mr. Daige said according to the Code Enforcement Officer, there are other fines that are not paid on this property. He asked what happens in that situation.

Mrs. Hillman asked wouldn't they add all them together and send the information to the Licensing Board.

Mr. Price said that he didn't know their procedures are or if they would honor this. He said the Board can't prevent Mr. McCracken from working, but if his license is revoked they can.

Mr. Turner asked can the Building Official do that.

Ms. Sanderson said they could ask Mr. Scott McAdam, Indian River Count Building Official, if this is something that can be presented to the County Construction Board of Adjustment.

Mr. McDonald suggested that the Board wait on further discussion about this until Mr. Turner brings back more information to them. The Board members agreed.

Mr. Noonan made a motion that the Board finds there was a violation, the property is now in compliance, and that the Board issues a Board order for payment of the \$100

civil penalty and the cost of enforcement of \$33.44. Mr. Pizzichillo seconded the motion and it passed unanimously.

- d. **CASE #19-CE-10539 / 2228M**
VIOLATOR: FQSR RE II, LLC; dba KBP Foods / Rachel Blevins
VIOLATION: Oak Tree removed without a permit – Code Section 72.41
VIOLATION ADDRESS: 4040 20th Street, Vero Beach, Florida 32960
(Failure to comply; Failure to pay \$50 civil penalty)

This item was pulled from today's agenda.

- e. **CASE #19-CE-10413 / 2179M**
VIOLATOR: G&S Investments of Indian River County, Inc. / Charles Sullivan, Jr., Agent; Michael Miller's Marine Service, LLC / Michael Miller, Sr., Agent
VIOLATION: Site Plan approval needed for the property and right-of-way encroachment – Code Sections 64.06 (a)(e)(8)(h); 71.06
VIOLATION ADDRESS: 1305 29th Street, Vero Beach, Florida 32960
(Failure to comply)

Ms. Sanderson reported that service of the citation was provided by service to the property owner and posting for the tenant of the property. The civil penalty has been paid. She asked that the Board finds there is a violation, the violation continues and the civil penalty has been paid. That the Board issues a Board order to correct the violation within 21 days and if not in compliance continuing penalties shall commence on October 11, 2019 and to pay the cost of enforcement in the amount of \$90.23.

Mr. Noonan asked how much time does she want the Board to give them.

Ms. Sanderson answered 21 days. She reported that she spoke with Mr. Michael Miller, Agent, this morning and met prior to today's hearing. She said that Mr. Miller was on his way to the Planning and Development Department and she is confident that they will be in compliance within that timeframe.

Mr. Noonan suggested that they allow 30 days to come into compliance.

Ms. Sanderson agreed.

Mr. Noonan made a motion that the Board finds there is violation, the violation continues, that the civil penalty has been paid, and that the Board issues a Board order for the property to come into compliance within 30-days of today's date and if not, continuing civil penalties shall commence as of October 11, 2019, and to pay the \$90.23 cost of enforcement. Mr. Kennedy 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 3:03 p.m.

/sp