

**CODE ENFORCEMENT BOARD MINUTES**  
**Wednesday, February 12, 2020 – 2:00 p.m.**  
**City Hall, Council Chambers, Vero Beach, Florida**

**PRESENT:** Chairman, Kirk Noonan (arrived at 2:07 p.m.); Vice Chairman, Linda Hillman; Members: Eric Price, Christopher Bryant, Frank Pizzichillo, Stephen McDonald, Richard Kennedy, Alternate Member #1, Ken Daige and Alternate Member #2, Sharon Gorry **Also Present:** Code Enforcement Officer, Melody Sanderson 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 Vice Chairman led the Board members and the audience in the Pledge of Allegiance to the flag.

The Deputy City Clerk swore in staff.

**3. PRELIMINARY MATTERS**

**A) Adoption of Minutes – January 8, 2020**

**Mr. Kennedy made a motion to approve the minutes of the January 8, 2020 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 #20-CE-10578 – Ralph Femminella from today's agenda. She reported that the property was brought into compliance yesterday.

**Mr. Price 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**

None

**B) Non-Compliance / Compliance Reports**

**1. Request for Board Order**

- a. **CASE #20-CE-10578 / 225M**  
**VIOLATOR:** Ralph Femminella  
**VIOLATION:** Public nuisance – property is open and unsecured, trash throughout the property – Code Sections 38-31 (a) (b)(5)(8)  
**VIOLATION ADDRESS:** 4000 Atlantic Boulevard, Vero Beach, Florida 32960  
**(Failure to comply; Failure to pay \$50 civil penalty)**

This item was pulled from today's agenda.

- b. **CASE #17-CE-7966 / 1187M**  
**VIOLATOR:** T Mobile / Magenta Wireless, LLC; JLG Corporation Services, Inc., Agent  
**VIOLATION:** Failure to obtain Business Tax Receipt – Code Section 70.62 (a)(1)  
**VIOLATION ADDRESS:** 524 21<sup>st</sup> Street, Vero Beach, Florida 32960  
**(Code Officer found the property in compliance on January 3, 2020. The initial civil penalty of \$50 was received on January 9, 2018 – The Board allowed five (5) days to correct from the date of the hearing (December 13, 2017) or continuing penalties would commence, which commenced on December 19, 2017. ESTIMATED CALCULATION: Days of non-compliance: December 19, 2017 through January 2, 2020 = 745 days x \$50 = \$37,250)**

Ms. Sanderson reported that at the time this case was heard by the Board in 2017, no request for a hearing on the citation was made so a hearing to contest the citation was waived and the violation was deemed admitted by the violator. She reported that the property was found in compliance on January 3, 2020, and the initial civil penalty was paid on January 9, 2018. She asked that the Board finds there was a violation, that the property is now in compliance, to cease the continuing civil penalties, and to issue a Board order for payment of the accrued civil penalties.

Mr. Daige asked are any fines due at this time.

Ms. Sanderson explained that they paid the initial civil penalty; however, there are continuing penalties.

Mr. Daige asked are monies due.

Ms. Sanderson said approximately \$37,000.

Mr. Price asked if they have to try to collect the penalties, who would they put a lien against.

Mr. Pizzichillo asked Ms. Sanderson if she is recommending that the Board find the violator \$37,250 for failure to comply.

Ms. Sanderson answered absolutely. She said this company was noticed with a warning citation, they were noticed with a citation with a civil penalty, they were noticed with a Notice of Hearing, and they were noticed with the Board order. She said at one (1) point the company reached out to the Planning and Development Department to verify that they needed a Business Tax Receipt.

**Mr. Pizzichillo made a motion that based on the recommendation of the Code Officer, and based on the fact that he has never seen this person appear before this Board ever, to his knowledge, and based on the fact at \$50 a day that they estimate, and it is only an estimation, that the violation should pay the fine of at least \$37,250. He stressed that this is an approximation.**

**Mr. McDonald added to the motion that the continuing civil penalties cease.**

**Ms. Sanderson clarified that included in the motion is to cease the continuing penalties.**

**Mr. Pizzichillo agreed.**

Mr. Daige asked is the civil penalty going against an individual or a company.

Mrs. Hillman thought it would go against the company.

**Mr. McDonald seconded the motion.**

Mr. Daige asked since the City Attorney is not present for today's meeting, would it be possible to get an answer on how the City can collect the penalties and how they would lien the property. He asked if they could revisit this later on down the road to see about the lien process.

Mr. Price did not think that has a bearing on how they vote on this. His vote is not contingent on knowing that fact.

**The motion passed 7-0 with Mr. Daige voting yes, Mr. Kennedy yes, Mr. McDonald yes, Mr. Pizzichillo yes, Mr. Price yes, Mr. Bryant yes, and Mrs. Hillman yes.**

- c. **CASE #19-CE-10470 / 2212M**  
**VIOLATOR:** T Mobile / Magenta Wireless, LLC; JLG Corporation Services, Inc., Agent  
**VIOLATION:** Failure to obtain Business Tax Receipt – Code Section 70.62 (a)(1)  
**VIOLATION ADDRESS:** 524 21<sup>st</sup> Street, Vero Beach, Florida 32960  
**(Code Officer found the property in compliance on January 3, 2020. The initial civil penalty of \$100 was received on December 9, 2019 – Continuing penalties of \$100 per day commenced on November 15, 2019 (the day after the original compliance date of November 14, 2019).**  
**ESTIMATED CALCULATION: Days of non-compliance: November 15, 2019 through January 2, 2020 = 49 days x \$100 = \$4,900)**

Ms. Sanderson reported that this is a repeat violation. Service of the citation was by certified mail on the local business, as well as the corporate agent. The property was found in compliance on January 3, 2020, and the civil penalty was paid on December 9, 2019. She asked that the Board finds that there was a violation, the property is now in compliance and to issue a Board order to stop the continuing penalties and to pay the amount of the continuing penalties.

Mr. Kennedy asked do they pay the tax to the State on their business.

Ms. Sanderson explained that in order to maintain a business within the City, you would need an annual Business Tax Receipt.

Mr. Kennedy asked Ms. Sanderson if she knows if they are in compliance with paying their sales tax to the State.

Ms. Sanderson answered no.

Mr. Pizzichillo said they are looking at penalties of \$4,900.

Mrs. Hillman said approximately.

Mr. Kennedy asked in the requirement to get a Business Tax Receipt, is there anything that gives them the ability to notify the State regarding renewal of their LLC or their corporate license.

Ms. Sanderson said not to her knowledge.

**Mr. Pizzichillo made a motion there was a violation, it has been corrected, and they are looking to stop any continuing penalties, however they are looking for an approximate number of \$4,900. He asked if he is correct in that.**

Ms. Sanderson said they are looking to stop the continuing penalties and to access the penalties that have accrued and find the property in compliance.

**Mr. Pizzichillo withdrew his motion.**

**Mr. Pizzichillo made a motion that there was a violation, it has been corrected, and to stop the continuing penalties and to pay the amount of accrued penalties. Mr. McDonald seconded the motion and it passed unanimously.**

## **6. OLD BUSINESS**

None

## **7. ADMINISTRATIVE MATTERS**

None

## **8. CLERK'S MATTERS**

None

## 9. ATTORNEY'S MATTERS

### A) Article VII – Code Enforcement

The Deputy City Clerk reported that the Board received Article VII – Code Enforcement of the City Code. In discussions with the City Attorney, it was felt that the Board members might have a better understanding of the process by reading through this information.

Mr. Kennedy suggested that the City Attorney be prepared to answer questions at their next meeting.

Mr. Pizzichillo thought the major concern of the Board is that when there is a violation, people should live up to their responsibilities. He didn't think the City should have their hands tied. He said there has to be a remedy somewhere.

Mrs. Hillman said in reading through the information, she does have several questions for the Attorney. She suggested that the Board members read over the information provided and to highlight anything they had questions about.

Mr. Pizzichillo thought that Mr. Daige brought up a question at their last meeting in terms of what can be done.

Mr. Daige said that is correct. He said that he had asked questions when they talked about liening property; what mechanisms were in place and the Attorney really didn't have too many answers so he was going to look into the situation and come back before the Board and give them his overview as far as liening properties, especially the ones that have heavy fines. What is the mechanism to actually have it on file that the City does collect that money. Apparently whatever is currently in the Code, from what he took from that discussion, was that it is weak.

Mrs. Hillman said it is very weak. She said that she discovered things in the Code that she feels she should question the Attorney on because it appears to her that they do have avenues, but she wants to clarify them.

Mr. Pizzichillo felt the Board's goal is to see this through to the end to get some answers.

Mr. Daige said the other thing is regarding the policy. He said it could already be in the Code, but it is hard to navigate. He said they could add some "clarity" to the Code to make it clear.

Mr. McDonald referred to Section 2-305 of the Code, "*Recovery of unpaid civil penalties and costs; unpaid penalties and costs to constitute a lien; foreclosure; duration of liens; prohibition of administrative action.*" He said it is pretty specific that the City can do just about anything they want to collect this money so it is really not the Board's responsibility. This falls upon the City Council to direct the City Attorney to file the suit.

Mr. Pizzichillo said that he didn't know if the Board could do this, but suggested that they send a letter to the City Council asking them to look into these matters so that it becomes obvious to them that they either change it or do something about it. He felt they should make the City Council aware of the situation so they can deal with it.

Mr. Daige agreed. He said there are other ways that they can take care of it where it is not so fuzzy for future Code Boards. He said that he would like to wait until they have the City Attorney present because he does have some questions and there is a way to streamline this and there is a way to notify the City Council. However, he would rather wait until they have the City Attorney present.

Mr. Pizzichillo felt they should put this on their next agenda.

The Board members agreed.

**10. CHAIRMAN'S MATTERS**

None

**11. MEMBER'S MATTERS**

None

**12. ADJOURNMENT**

Today's meeting adjourned at 2:23 p.m.

/sp