

Town of Palm Beach

Code Enforcement Board

THURSDAY, FEBRUARY 18, 2010, 2:00 p.m.

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be “abbreviated” in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town’s website at www.townofpalmbeach.com or may obtain an audio recording (tape or CD) of the meeting by contacting Raychel Houston, Secretary to the Code Enforcement Board at (561) 227-6386. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

I. Call to Order:(2:00:00 p.m.)

The meeting was called to order in the EOC at 2:00 p.m. by Chairman Timothy Hoffman.

Mr. Hoffman acknowledged Council Member Diamond in the audience and thanked him for his attendance.

II. Roll Call:(2:00:01 p.m.)

Upon roll call, the following Board members were present: Chairman Timothy Hoffman, Vice Chairman Harris S. Fried, Joel P. Koeppe, Larry Ochstein, Madelyn Greenberg, Cynthia Van Buren, James M. Ballentine, Jr. and alternate members, W. Anthony Dowell and Scotch Peloso.

Staff present: Attorney John Randolph, Captain John Maio, Sgt. Curtis Krauel, Lead Code Enforcement Officer Robert Walton and Recording Secretary Raychel Houston.

III. Approval of the Minutes of January 21, 2010:(2:00:19 p.m.)

MOTION BY MS. GREENBERG FOR APPROVAL OF THE JANUARY 21, 2010 MINUTES

SECONDED BY MR. KOEPEL

MOTION PASSED UNANIMOUSLY

IV. Administration of the Oath to Town Staff:(2:00:50 p.m.)

Town Staff who would be testifying were sworn in by Recording Secretary Houston.

V. Public Hearings: (2:01:35 p.m.)

A. Case # 10-2700, 2842 S. Ocean Blvd., 2401 2301 00 Trust

Violation of Chapter 134, Section 134-1702 of the Town of Palm Beach Code of Ordinances, no structure of any nature shall be constructed closer than 150 feet to the designated ocean bulkhead line unless a proper ocean bulkhead exists and Chapter 134, Section 134-1473 which does not permit any structures or beach buildings with maximum dimensions greater than 20x25 feet and Section 134-1474 which does not permit more than one beach house structure to be erected

Lead Code Enforcement Officer Walton presented the facts of the case and said the property still has not been brought into compliance. Mr. Walton entered the photographs of the violation into the record. Mr. Walton said Paul Castro, Zoning Administrator, was present to testify on behalf of the Town. Mr. Randolph asked Mr. Walton to make the Notices of Violation part of the record which he did.

Mr. Castro said the Town Code is a permissive one and anything specifically provided in the code would be allowed and technically the Town has allowed beach chairs and some beach umbrellas. However, in this beach area zoning district, only one beach house structure is allowed. In his opinion, this would be considered a beach house structure in that it is built for the leisure and recreational use of those people using the beachfront property. These beds are fairly substantial in size and in combination, exceed the maximum dimension as well as the maximum number of beach house structures permitted. Only one beach house structure is permitted, not to exceed 20'x25' in area.

Mr. Ballentine asked Mr. Castro how long the structures had been there and Mr. Castro said he believed they had been there since before Christmas. Mr. Koeppe asked if they were movable and Mr. Castro said it was his understanding they were constructed on site. Mr. Hoffman asked if they were within the set back line and Mr. Castro said he could not tell because he did not know where the right-of-way line is relative to the survey they were provided when the property was originally developed. He said he believed they were, based on the location of the other beach cabana. Mr. Dowell asked if there was a reason the multiple structures were not addressed at last month's meeting. Mr. Castro said the other structure was cited before these went up. In response to Mr. Fried's question about the definition of a structure, Mr. Castro read the applicable code sections.

Mr. Walton said the Town recommends a finding of non-compliance, administrative costs of \$150.00 and they be given until February 19, 2010 to remove the four structures from the beach.

Jonathan Chane of Greenberg Traurig was present on behalf of the Omphoy Hotel and said Daniel Ruda, Director of Hotel Operations for the owner of the hotel, was also present. Mr. Chane asked Mr. Walton questions reference his

employment with the Town and the Notice of Violation. Mr. Hoffman asked Mr. Chane if he would be sworn in as he would be stating facts and providing information. Mr. Chane said he did not believe it was appropriate for him as the attorney representing the Omphoy to be sworn in but said he would be happy to if the Board preferred it. Mr. Chane was sworn in by Recording Secretary Houston. Mr. Chane proceeded to question Mr. Walton reference his examination of the beds and asked him if he measured them and Mr. Walton said he had not. Mr. Chane asked Mr. Walton if there were other items on the beach like lounge chairs and umbrellas and Mr. Walton said there were and the cabana was also there. Mr. Chane distributed copies of the letter dated January 20, 2010 to the Board and questioned Mr. Walton about the language of Section 134-1473, specifically the measurement of the beach beds and how that was determined. Mr. Chane also asked Mr. Walton about Section 1474 of the Code and asked him if he had the title for that subsection and Mr. Walton said it was the “number of beach house buildings in setback”. Mr. Chane asked Mr. Walton if it was the Town’s position that these beach beds are a beach house that falls under Section 1474 and Mr. Walton said that was correct.

Mr. Chane asked Mr. Walton if he had walked the beach to determine what other types of lounge chairs, tables and other items are located on the beach near the Omphoy Hotel. Mr. Walton said he had been on the beach and other hotels/condominiums have lounge chairs. Mr. Chane asked him if he had any reason to believe that these beach beds were not just two lounge chairs pushed together and Mr. Walton said they did not look like two lounge chairs pushed together to him. Mr. Chane asked Mr. Walton if he could illuminate for the Board what objective criteria the Town applies to determine what a structure is and Mr. Walton said they use a common sense approach. Mr. Chane asked Mr. Walton if he recalled Mr. Castro’s testimony last month that anything is a structure within reason and Mr. Walton said he did. Mr. Castro said Staff relies on the Zoning Administrator when they make some of these decisions and interpretations so he would be the best person to answer these questions. Mr. Chane asked Mr. Walton if he had cited any other hotel or condominium for having a lounge chair on the beach and Mr. Walton said he had, with regard to removing them during turtle season in accordance with DEP regulations.

Mr. Chane asked Mr. Castro questions regarding his employment with the Town and asked him if he personally examined the beach beds and asked him to describe his analysis of the beach beds for the Board. Mr. Castro said they looked like they had been constructed on site. They are too large to have been carried in and he believes they are 10’x10’ or 10’x12’ but he did not measure them. Mr. Castro said he stepped off one side and believes it is approximately 10’x10’. Mr. Chane asked Mr. Castro what the zoning of the hotel was and Mr. Castro said it actually allows for residential to be built on that property. It is a commercial hotel in a residential district. Mr. Chane asked Mr. Castro if, under his interpretation of the code, one of the beach beds would be allowed but not all four. Mr. Castro said that would be correct, that one beach cabana used for beach bathing would be

allowed. Mr. Chane asked Mr. Castro what objective criteria the Town applied to determine if something sitting on the ground was a structure. Mr. Castro said that typically if one person could not move it, it is a structure. Mr. Castro said that not even two people could move this beach bed. Mr. Chane asked Mr. Castro if he tried to move it and he said he did not. Mr. Chane said a beach house means a permanent structure and these were not permanent. Mr. Castro said permanent is relative so he interprets something as permanent that is not easily moved. Mr. Castro said these beds are not portable; a reasonable mind could look at them and say they are not portable. Mr. Castro said they are not lounge chairs pushed together either.

Daniel Ruda was sworn in by Recording Secretary Houston. In response to Mr. Chane's question, Mr. Ruda said he was employed by Obadon Hotels which is a wing of Ceebraid-Signal who are the owners of this particular hotel. Mr. Ruda said he is the Director of Operations for the corporate entity and oversees all of the maintenance, engineering projects, construction, and due diligence of all the hotels. Mr. Chane asked Mr. Ruda if he was familiar with the beach beds which are the subject of this hearing and he said he was. Mr. Ruda said he measured the beds with a tape measure and they are 8 ½ x 8 ½ x 9 feet tall. Mr. Ruda said they can be moved and can be carried. Mr. Chane asked Mr. Ruda, as Director of Operations for the hotel, if was he able to determine whether or not something is a structure based on the code as it is currently written and he said he could not.

Mr. Castro asked Mr. Ruda if these beach beds were placed on the property after the beach towel cabana and he said they had been. Mr. Castro asked Mr. Ruda if he was aware there was an issue with the cabana when these beds were placed on the property, because they were cited for the one beach cabana prior to these coming on the property and Mr. Ruda said that was correct. Mr. Castro asked Mr. Ruda why the Town was not notified or asked whether these would be acceptable on the property. Mr. Ruda said it was because they were considered no more than a lounge chair, an umbrella or a jet ski. Mr. Castro asked Mr. Ruda how these beds were put on the property and he said they came pre-made and the only thing that was put together on site was the posts. Mr. Castro asked how many people it took to move the beds and Mr. Ruda said about four. Mr. Castro asked if they could be lifted and taken over the dune by four people and Mr. Ruda said yes, if the posts were removed. Mr. Castro asked if the beds were removed at night and Mr. Ruda said only the cushions are removed.

Mr. Chane summarized his case to the Board and said there is no objective criteria to determine what is a structure and the code section is over broad. Mr. Chane went through the three code sections and presented his case why they did not apply to his client and asked for the violations to be dismissed. Mr. Castro said the owner of this property has done enough business in the Town to know he should probably contact the Town to find out whether it is permitted or not and if he did not like what he was told, he could appeal any administrative decision by an officer of the Town, including the Zoning Administrator, and go in front of the

Council to make arguments relative to whether these are structures or not. They did not do that even though they knew they had issues with the beach towel cabana they put out without permits. Mr. Chane said he objected to this entire testimony as this is not before the Board today and Mr. Castro said it was just the facts. Mr. Chane said the beach beds are the issue today and the beach cabana from last month is irrelevant and said he objected to Mr. Castro's narrative.

Ms. Greenberg told Mr. Chane he is challenging the Town's Codes and he expected the Board to support his challenge and that was not very practical. Mr. Chane said he was not challenging the Town Code. He said there are three code sections being applied here, two of which are not applicable to the issues before the Board today. The third thing is that it is a broad code section and that is the problem because the code can be interpreted any number of ways. Mr. Hoffman asked Mr. Chane if his contention was that these beds are not a structure and he said that was correct. Mr. Chane said his clients were not aware they needed a permit to put the beach beds out. Mr. Walton said once they had been made aware by the Town that they needed a permit, they decided not to get one. Mr. Chane said the remedy was to come before the Code Enforcement Board to determine whether or not it was, in fact, a violation.

Mr. Koepfel said he had listened to both sides and could understand both positions. He said he thinks the problem is that the ordinances are vague and he does not think the ordinances are clear enough to find there is a violation here. He said he thinks it is appropriate that the ordinances be more clearly defined as to what is a structure. Ms. Van Buren told Mr. Chane she disagreed with him that the two provisions cited do not apply; she said she believed all of the provisions applied. She said the overwhelming thing in her mind is that the Board has to deal with the code as it is and the Board has to rely on the expert opinion of the Town officials, Mr. Castro and Mr. Walton, not on his client's opinion of the code. It is the Town's Code and the Town's interpretation of its code that will determine if a violation has occurred. Mr. Chane said Mr. Walton, Mr. Castro and Mr. Ruda were here today to present evidence to the Board and it the Board who is to evaluate the evidence and determine whether or a violation has occurred.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL FEBRUARY 19, 2010 TO REMOVE THE FOUR STRUCTURES FROM THE BEACH
SECONDED BY MS. VAN BUREN
MOTION PASSED 6-1 WITH MR. KOEPPPEL DISSENTING**

B. Case # 10-2701, 1230 S. Ocean Blvd., SMM Realty LLC

Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and properties to be maintained in good condition and Chapter 42, Section 42-87 (7),

appurtenances such as swimming pools to be kept in a good state of repair and the water to be maintained in a clear and sanitary condition with pool pumps and filtration equipment in working condition

Lead Code Enforcement Officer Walton presented the facts of the case and said the property is still not in compliance. He entered photographs of the property into the record. The Town recommends a finding of non-compliance, administrative costs of \$150.00 and to give them until March 12, 2010 to come into compliance.

Eugene Lawrence was sworn in by Recording Secretary Houston and said he was present on behalf of the property owner, Mr. Maoli. Mr. Lawrence said Mr. Maoli asked him to request a 30 day extension. The pool equipment is not operational and the property owner is in the process of getting a contractor to come in and replace it. The property owner told him he would shock the pool but Mr. Lawrence said he went by today and that did not look like it had been done. Mr. Walton asked if construction on the house would be started within 30 days. Mr. Lawrence said there was no way construction on the house could start in 30 days. Mr. Walton repeated that the Town recommends a finding of non-compliance, administrative costs of \$150.00 and they be given until March 12, 2010 to come into compliance. Compliance would be achieved by either getting a building permit and turning the property into a construction site or repairing the pool and removing the stored construction materials.

Mr. Koeppel asked if there were plans that could be submitted to the Town to pull a permit and Mr. Lawrence said there were not as there was probably going to be some variance requests. Mr. Koeppel asked about the materials that were stored and Mr. Lawrence said he was not sure what was there. He said there is some cast metal, arches and carved stone but none if it is anticipated to be a part of the reconstruction of the house. Mr. Koeppel asked if it was visible from the street and Mr. Walton said it was. Mr. Lawrence said it could be seen from Emerald Way. Mr. Fried asked if there were completed plans for the reconstruction of the pool and if a contractor had been engaged to do the pool. Mr. Lawrence said the property owner told him he had a contractor but he had not been involved with that, that he was the architect for the house.

Mr. Ochstein said he wanted to acknowledge that Mr. Lawrence had been the Chairman of the Code Enforcement Board not that long ago and knew Mr. Lawrence understood what the Board was up against. He said in deference to Mr. Lawrence, the Board should give him the 30 days he is requesting. Mr. Walton said he would ask that they not be given the 30 days, that if the Board wanted to extend the time, they give them until March 16th or March 17th so they could be brought back to the Board. Mr. Lawrence thanked Mr. Ochstein for his consideration but said he felt the issue should be the state of the property and not him.

**MOTION BY MR. KOEPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL MARCH 16, 2009 TO COMPLY
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

- E. Case # 10-2702, 301 Australian Ave., Brazilian Court Hotel
Violation of Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances, noise over allowable level

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a noise complaint from a neighbor who did not want to be identified. He issued a citation with a fine of \$250.00 which as of today, had not been paid. The Town recommends a finding of non-compliance, administrative costs of \$150.00 and payment of the \$250.00 fine and any applicable penalties.

Jonathan Chane of Greenberg Traurig was present on behalf of the Brazilian Court Hotel and called Leticia Bilotta to testify. Mr. Walton said Ms. Bilotta is the manager of the hotel and was the one who signed the notice. Ms. Bilotta was sworn in by Recording Secretary Houston. Mr. Chane asked Ms. Bilotta why the temporary chiller was needed and she said the chiller system that operates throughout the hotel went down and their only option was to bring in a temporary chiller. Ms. Bilotta said the hotel was at almost 100% capacity and they had luncheons and receptions scheduled. The chiller also cools their restaurant, the salon and the guest rooms. The chiller was located in the loading dock area. Ms. Bilotta said that when they ordered the temporary chiller, they requested sound boards to eliminate some of the sound coming from it. Mr. Walton asked Ms. Bilotta if they had tried to muffle some of the noise with hay bales or turn the unit down some and she said she spoke to their director of engineering and there was nothing more they could do to eliminate the sound. Mr. Walton said he inspected the unit and did not see any sound boards but he would accept her testimony. Mr. Ballentine asked what the situation was today and Mr. Walton said the existing chiller has been repaired. He said the reason he wrote the citation was because it was a problem occurring at that time which needed to be addressed and there had also been two additional citations written. In response to Mr. Hoffman's question, Mr. Walton repeated the Town's recommendation. Mr. Fried asked if the equipment ran 24 hours a day and Ms. Bilotta said it did. Mr. Hoffman said there did not seem to be any alternative to mitigate the circumstance.

Mr. Koepfel said his suggestion would be to find them in non-compliance and assess them \$150.00 in administrative costs which would cover all three cases and no fine. Mr. Hoffman said he did not believe the Board could do three cases at once. Mr. Randolph said that if both sides agree that the testimony is the same for each of these cases, he believed all three cases could be incorporated in one motion. Mr. Randolph asked if each side would stipulate that the testimony is

going to be the same. Mr. Walton said the exception would be that there were three different people taking the readings and he did not know if they needed to testify. Mr. Randolph said he did not believe there was a dispute about the readings.

MOTION BY MR. KOEPPEL TO CONSOLIDATE ALL THREE CASES, FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND NO FINE BE IMPOSED

Mr. Ochstein asked if there was some assurance this was not going to happen again, that the neighbors were not going to be disturbed again. Mr. Walton said he did not know how old the equipment was and what the repairs were, if they were temporary or permanent. Ms. Bilotta said the repairs were permanent. Mr. Ballentine said he wanted to be clear about the other two citations and Mr. Walton said there was one written for each day.

MOTION BY MR. KOEPPEL TO CONSOLIDATE ALL THREE CASES, FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND NO FINE BE IMPOSED

SECONDED BY MS. GREENBERG

MOTION PASSED 6-1 WITH MS. VAN BUREN DISSENTING

- F. Case # 10-2703, 301 Australian Ave., Brazilian Court Hotel
Violation of Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances, noise over allowable level

See Case # 10-2702

- G. Case # 10-2704, 301 Australian Ave., Brazilian Court Hotel
Violation of Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances, noise over allowable level

See Case # 10-2702

VI. Fine Consideration: (3:32:25 p.m.)

- A. Case # 09-2672, 2842 S. Ocean Blvd., 2401 2301 00 Trust
Violation of Chapter 134, Section 134-1702 of the Town of Palm Beach Code of Ordinances, no structure of any nature shall be constructed closer than 150 feet to the designated ocean bulkhead line unless a proper ocean bulkhead exists

Lead Code Enforcement Officer Walton said this property was found in non-compliance at the last meeting and they were ordered to come into compliance by

January 22, 2010 by removing the beach cabana. The Town recommends a fine in the amount of \$250.00 a day commence on January 22, 2010 and continue until compliance is achieved.

Jonathan Chane of Greenberg Traurig was present on behalf of the Omphoy and said there was nothing he needed to add as the case had been discussed extensively. Mr. Randolph said these cases are under appeal and this fine will probably be consolidated in that appeal. Mr. Randolph said the Board's decision had been appealed and Mr. Ballentine asked to whom and Mr. Randolph said it was a Writ of Certiorari appealed to the Circuit Court. It goes to a three judge panel of the Circuit Court and it will be briefed and argued in front of them. Mr. Chane said he did not believe the notice of appeal had been filed yet.

**MOTION BY MR. FRIED TO ASSESS A FINE IN THE AMOUNT OF \$250.00 A DAY, COMMENCING ON JANUARY 22, 2010 AND CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MR. OCHSTEIN**

During discussion on the motion, Mr. Koepfel said he wanted to reiterate his objection that he believes the fine is premature, that the hotel guests and the poor beach guy should not be subjected to the sun on a constant basis and he is opposed to any fine at this time.

**MOTION BY MR. FRIED TO ASSESS A FINE IN THE AMOUNT OF \$250.00 A DAY, COMMENCING ON JANUARY 22, 2010 AND CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MR. OCHSTEIN
MOTION PASSED 6-1 WITH MR. KOEPEL DISSENTING**

(Mr. Walton asked the Board to go back to the prior cases which were consolidated and add the stipulation that it be paid within 10 days or it would revert back to the original fines. Mr. Koepfel and Mr. Hoffman both noted there was no fine imposed. Sgt. Krauel said the Town is requesting that if the costs are not paid within 10 days, the original fines would be imposed and Mr. Koepfel and Ms. Greenberg said they would amend their motion and seconding of it to include that provision. Mr. Chane was still present in the audience and acknowledged this amended motion and had no objection.)

- E. Case # 10-2702, 301 Australian Ave., Brazilian Court Hotel
- F. Case # 10-2703, 301 Australian Ave., Brazilian Court Hotel
- G. Case # 10-2704, 301 Australian Ave., Brazilian Court Hotel

AMENDED MOTION BY MR. KOEPEL TO CONSOLIDATE ALL THREE CASES, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT

**OF \$150.00 AND NO FINE BE IMPOSED PROVIDED THE \$150.00 ADMINISTRATIVE COSTS ARE PAID WITHIN 10 DAYS
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY WITH MS. VAN BUREN ADVISING THAT SHE WAS OPPOSED TO THE ORIGINAL MOTION BUT NOT THE AMENDMENT**

B. Case # 10-2691, 893 S. County Road, Joseph Cain

Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and properties to be maintained in good condition with grass no greater than 8" in height.

Lead Code Enforcement Officer Walton said the violator had been found in non-compliance at the last hearing, assessed administrative costs of \$150.00 and been given until March 26, 2010 to come into compliance. The grass was not cut within the time frame allowed by the Board although it was cut prior to this hearing. The Town recommends a fine of \$75.00 for the 20 days the property was out of compliance for a total of \$1500.00.

**MOTION BY MR. KOEPPPEL TO ASSESS A FINE IN THE AMOUNT OF \$1500.00, WHICH IS \$75.00 A DAY FOR THE 20 DAYS OUT OF COMPLIANCE
SECONDED BY MR. FRIED
MOTION PASSES UNANIMOUSLY**

C. Case # 10-2692, 7 Lagomar Road, Dolores M. Swanson

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior walls shall be reasonably free of cracks or holes through which weather elements can enter the building or structure and all exterior surfacing material shall be painted and properties maintained in good condition

Lead Code Enforcement Officer Walton said the property was found in non-compliance at the last hearing and they were given until February 11, 2010 to come into compliance. The property has substantially come into compliance but there is one beam on the south side of the property that the Town has asked for a structural review of and a letter from an engineer certifying that the structure is sound with this beam being in the condition it is. The Town recommends the Board grant them additional time, until March 12, 2010 to come into compliance.

**MOTION BY MS. GREENBERG TO GRANT THE VIOLATOR ADDITIONAL TIME TO COME INTO COMPLIANCE, UNTIL MARCH 12, 2010
SECONDED BY MR. FRIED**

MOTION PASSED UNANIMOUSLY

D. Case # 10-2695, 130 Sunrise Ave., PH 9, Rita Schneider

Violation of Chapter 18, Section 18-242 of the Town of Palm Beach Code of Ordinances, building permits required to construct, install, repair or alter any building or building system

Lead Code Enforcement Officer Walton gave a brief synopsis of the case and said the property is still not in compliance. The Town recommends a fine in the amount of \$150.00 a day, commencing on February 17, 2010 and continuing until compliance is achieved.

**MOTION BY MR. KOEPPEL TO ASSESS A FINE IN THE AMOUNT OF \$150.00 A DAY COMMENCING ON FEBRUARY 17, 2010 AND CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MR. BALLENTINE
MOTION PASSED UNANIMOUSLY**

VII. Fine Reduction: (3:42:17 p.m.)

A. Case # 09-2643, 211 Royal Poinciana Way, Vesenz Holding Corp.

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior surfaces to be kept painted

Lead Code Enforcement Officer Walton said a fine in the amount of \$100.00 a day had been assessed by the Board, commencing on July 14, 2009. The property was out of compliance for 112 days and the fine stands at \$11,200.00. Mr. Walton said the property manager from Brennar Property, Carla Casey and Tom Youchak were present to speak on behalf of the property owner.

Carla Casey was sworn in by Recording Secretary Houston and said she was with Brennar Real Estate Group. She said they are a third party management company that manages the property for Vesenz Inc. Ms. Casey said what everybody thought was just a minor paint issue ended up being a larger issue. In hindsight, they should have just painted over the area and dealt with the permitting at a later date. They opted to go in and do the appropriate thing and remove all of the corroded, rusting metal along the top of the building and all of the underlying wood. They did not expect to be tied up in permitting for right of way permits and DOT permits. They lost 70 days in permitting, trying to get the appropriate documents and approvals to do a repair that ended up costing about \$25,000.

Tom Youchak was sworn in by Recording Secretary Houston and said he worked for Brennar Real Estate and the Vesenz Properties on their construction and architectural projects. Jeff Taylor (*Town Building Official*) asked him to get

involved in the project because he had a permit on this building already from the previous year for hurricane work. Mr. Youchak said he assisted the roofing contractor in obtaining his building permit. Mr. Youchak said the contractor, American Roofing, submitted a MOT plan, a right-of-way plan because he had to have access to the road. The permit then went to Public Works and they advised he needed a DOT permit which meant it was a state road. The contractor did not know it was a state road and neither did he. An application for a permit had to be filed for in Ft. Lauderdale and that took about a month. When that came back, the contractor re-submitted for his permit in Palm Beach and that had already expired. He re-submitted and this time it was denied by Public Works because they wanted him to have a pedestrian walkway outside the bookstore because of the overhead work that was going to take place. It took about four more applications to get a permit. The construction work ended sometime in November and it was closed out early in December. It only took two to three weeks to do the work. It was just all of the permitting that kept them from getting the work done in a timely manner.

Mr. Walton asked Mr. Youchak to state how much of a reduction they are requesting. Mr. Youchak said he believed they are responsible for the first two or three weeks. He said they did the best they could under the conditions. Mr. Walton said the original hearing costs had been paid. In response to Mr. Youchak's question, he said he believed they were responsible for about 25 days or \$2500.00.

MOTION BY MR. KOEPPEL TO REDUCE THE FINE FROM \$11,200.00 TO \$2500.00 PROVIDED IT IS PAID WITHIN 10 DAYS OF THE HEARING

**SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

IX. Board Comments: (3:57:26 p.m.)

Mr. Ballentine asked for a follow up to the motion at the last meeting. Mr. Hoffman said he submitted the letter to the Town and it was circulated to all the Council members. He said he got a call from Ms. Coniglio who said they would be addressing this at their next Ordinance and Rules Committee meeting. Mr. Randolph also got a copy of the letter and is doing the research on it. Mr. Ballentine asked that the members of the Board receive a copy of the letter.

Mr. Koepfel said he would like to make a recommendation, based on these hearings on the Omphoy, that someone looks into better defining some of the terms used in the ordinances so this does not become an issue in the future. Mr.

Randolph said that was going to be done. Mr. Randolph said the Board does not need any action on this recommendation, that it is already being addressed.

X. **Adjournment:** (3:59:58 p.m.)

The meeting was adjourned without benefit of motion.