



TOWN OF PALM BEACH POLICE DEPARTMENT

A NATIONAL AND STATE ACCREDITED LAW ENFORCEMENT AGENCY



CODE ENFORCEMENT BOARD MINUTES 2:00 P.M. THURSDAY, NOVEMBER 20, 2008 AT THE TOWN COUNCIL CHAMBERS, 360 S. COUNTY ROAD

I. **Call to Order:** The meeting was called to order at 2:00 p.m. by Chairman Timothy Hoffman.

II. **Roll Call:**

Present: Timothy Hoffman, Chairman
Harris Fried, Vice Chairman
Joel P. Koepfel, Member
Larry Ochstein, Member
Catherine M. Duemler, Member
Madelyn Greenberg, Member
Cynthia Van Buren, Member
James M. Ballentine, Jr., First Alternate (absent)
William P. Vanneck, Second Alternate

Staff: John C. Randolph, Town Attorney
Captain Dan Szarszewski, Support Services
Sgt. Curtis Krauel, Code Enforcement
Robert Walton, Lead Code Enforcement Officer
Nick Gerry, Code Enforcement Officer
Raychel Houston, Recording Secretary

III. **Approval of the Minutes of October 16, 2008:**

MOTION BY MR. FRIED FOR APPROVAL OF THE OCTOBER 16, 2008 MINUTES

MOTION SECONDED BY MR. KOEPPPEL

MOTION PASSED UNANIMOUSLY

IV. **Administration of the Oath to all persons who wish to testify:**

Let the record show that all persons wishing to testify were sworn in at this time by Recording Secretary Raychel Houston.

V. Public Hearings:

- A. Case # 08-2555, 200 Barton Ave., Robert W. Vanhellemont
Violation of Chapter 42, Section 42-87 (2) of the Town of Palm Beach Code of Ordinances, appurtenances such as concrete walls, fences and sidewalks to be kept in a good state of repair

Code Enforcement Officer Nick Gerry requested the case be dismissed as it was in compliance.

**MOTION BY MS. GREENBERG TO DISMISS THE CASE
SECONDED BY MR. KOEPEL
MOTION PASSED UNANIMOUSLY**

- B. Case # 08-2556, 339 Worth Ave., # 101S, City National Bank of Florida Tr
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, properties to be kept in sound condition and good repair, all windows and doors to be constructed and maintained in such a condition to exclude weather elements or insects and appurtenances such as awning frames and attached covered material to be maintained in good condition

Code Enforcement Officer Nick Gerry advised all of the violations have been corrected on this case except for the second story canopy cover which is missing from the frame structure. The Town Council is presently reviewing the ordinance requiring awning covers to be attached to frames and Staff is waiting on direction from Town Council. Mr. Gerry requested this case be dismissed without prejudice. Mr. Koepfel asked if it would be more appropriate to postpone the case rather than dismiss it. Mr. Gerry said it might take several months before this particular ordinance gets drafted and instead of requesting additional postponements, the property owner would be re-cited if the ordinance requires the awning covers to be installed.

**MOTION BY MR. KOEPEL TO DISMISS THE CASE WITHOUT
PREJUDICE
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

- C. Case # 08-2560, 325 S. Lake Drive, PH, Mary Myers Hilliard
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, appurtenances such as awning frames and attached covered material to be maintained in a good state of repair

Code Enforcement Officer Nick Gerry advised this was a second story apartment building with an awning frame without the canopy cover attached. As Town Council is reviewing this ordinance and Staff is awaiting direction, the Town requests this

case also be dismissed without prejudice.

MOTION BY MR. KOEPEL TO DISMISS THE CASE WITHOUT PREJUDICE

SECONDED BY MR. FRIED

MOTION PASSED UNANIMOUSLY

- D. Case # 08-2572, Royal Poinciana Plaza, Catharine Bradley
Violation of Chapter 10, Section 10-9 of the Town of Palm Beach Code of Ordinances, unauthorized feeding of feral cats

Sgt. Curtis Krauel presented the facts of the case and said it occurred on Saturday, October 25, 2008 at 4:39 a.m. Ofc. Zeller was parked in a marked patrol vehicle on the west side of Royal Poinciana Plaza, just south of the Playhouse. Ofc. Zeller saw Ms. Bradley walking her dog on the south side of the Plaza. Ofc. Zeller watched her return to her vehicle, which was also parked on the south side of the Plaza near the large banyan tree. Ofc. Zeller saw Ms. Bradley open the rear door of her van, remove an object from the rear compartment and place it on the ground. As Ms. Bradley returned to her vehicle and drove away, Ofc. Zeller inspected the area and saw three deposits of wet cat food on the pavement. The food was not in a container and appeared to have been dumped on the ground. Several undomesticated feral cats were already walking towards the food.

Ofc. Zeller initiated a traffic stop on Ms. Bradley on Coconut Row and upon making contact, Ms. Bradley said her attorney told her to remain silent and not answer any questions. Ofc. Zeller was able to see inside Ms. Bradley's vehicle, utilizing his flashlight and observed several bulk items of cat food in the rear passenger compartment. Based on his observations, Ofc. Zeller issued Ms. Bradley a Notice of Violation/Notice of Hearing for violation of Town Ordinance, Chapter 10, Section 10-9 unauthorized feeding of feral cats.

Sgt. Krauel said he made contact with the property manager, Danielle Cordes of the Sterling Organization, who told him Ms. Bradley does not have permission or authorization to feed any cats on their property. Ms. Cordes said she was unaware this activity was taking place and would take proactive measures in the future to report any unauthorized feral cat feeding to the police department.

The Board heard a previous case on Ms. Bradley on October 16, 2008 and found Ms. Bradley in non-compliance of Town Ordinance, Chapter 10, Section 10-9. She was ordered to pay a fine in the amount of \$250.00 and administrative costs of \$150.00. As a result of this previous order, this case would make Ms. Bradley a repeat violator and the Town recommends a finding of non-compliance, administrative costs in the amount of \$150 and a fine of \$500. Sgt. Krauel said Ofc. Zeller was present to answer any questions and had been sworn in.

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Ms. Bradley was present and said she pled not guilty. Mr. Hoffman asked Ms. Bradley if that was her only comment and she said she and Ofc. Zeller had a difference of opinion as to what he sees, both in the past case and in this one. Ms. Bradley said she was just walking her dog and Ofc. Zeller could not have observed her doing anything else from his position at the Hibel Museum.

Ofc. Zeller said he had an unobstructed view from where he was parked as he was in an elevated position, either standing on the fence or on the A frame of his vehicle. He saw Ms. Bradley go into her vehicle, take out objects and place them on the ground. He said a video could be made available to the Board members. Ms. Bradley said she maintains her opinion that Ofc. Zeller did not see her but even if he did, she has the permission of the caretaker of the feral cats in that area to go and check on them from time to time. She presented a document into evidence. Ms. Bradley said she is still president of Palm Beach Cat Rescue and Humane Society and still does humane work in the Town of Palm Beach. Ms. Bradley said that whether the cats are feral or not, most of them have Palm Beach Cat Rescue's chips in them. She said she has never given up ownership of these cats and that is another issue. Ms. Bradley said she was there with the full permission of the person who takes care of the feral cats and not all of the cats are feral.

Mr. Fried asked why she needed to do this at 4:30 in the morning or at other times in the middle of the night. Ms. Bradley said she got up very early. Mr. Fried expressed his concern about Ms. Bradley being on private property at this hour and the possibility that a police officer could mistake her for someone committing a crime and an incident could occur. Mr. Fried said he did not believe Ofc. Zeller or any other police officer would create a story of this nature and he was pleased there was a provision to increase the fine if she was found in violation. Ms. Bradley said she was sure she would be found guilty. Mr. Ochstein said he believed this was the fourth or fifth incident this year with Ms. Bradley and he also found it hard to believe that a police officer would make up stories. Ms. Bradley said police officers do make up stories and she was just being persecuted. Mr. Koepfel asked about the letter Ms. Bradley had circulated and noted that the date was June, 2007 and asked if she had anything more recent. Ms. Bradley said the letter had not been revoked. Ms. Bradley said all the letters of permission she has from residents are several years old and they had not been rescinded. Sgt. Krauel said he had spoken with the property manager of Royal Poinciana just today and was told Ms. Bradley was not authorized to feed anywhere on their property. PB Cats also does not have a feeding station on Royal Poinciana property and Ms. Bradley is not part of PB Cats which is the only authorized feeder for the Town. Ms. Bradley said that Leslie Marz was the official person for Royal Poinciana and has been for the past six years. Sgt. Krauel said he could not substantiate or deny that but he had spoken with the property manager for the entire property and Ms. Bradley is not authorized to feed there. Ms. Bradley said she was not feeding there anymore, that she had just gone there to check on the cats. Sgt. Krauel asked Ms. Bradley if it was her testimony today, under oath, that she had

not fed cats on October 25th. Ms. Bradley said she was not denying it or admitting it.

MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND A FINE IN THE AMOUNT OF \$500.00

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

- E. Case # 08-2573, 311 Worth Ave., Palm Beach Eyes – L’Optique and Love LLC
Violation of Chapter 46, Section 46-68 of the Town of Palm Beach Code of Ordinances, annual fire and life safety inspection fees not paid

Code Enforcement Officer Nick Gerry requested the case be dismissed as the fire inspection fee had been paid and the business was now in compliance.

MOTION BY MS. GREENBERG TO DISMISS THE CASE

SECONDED BY MS. DUEMLER

MOTION PASSED UNANIMOUSLY

- F. Case # 08-2574, 135 Root Trail, Root Ocean Property LLC
Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted, Chapter 42, Section 42-87 of the Town of Palm Beach Code of ordinances, appurtenances such as exterior light fixtures and plumbing to be kept in good condition and Chapter 46, Section 46-66, fire extinguishers not in compliance with NFPA standards.

Code Enforcement Officer Gerry requested the case be dismissed as it was now in compliance.

MOTION BY MR. FRIED TO DISMISS THE CASE

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

- G. Case # 08-2575, 940 N. Lake Way, Century Wines & Spirits Inc.
Violation of Chapter 38, Section 38-35 (b) of the Town of Palm Beach Code of Ordinances, burglar alarm fees not paid

Sgt. Curtis Krauel presented the facts of the case and advised the fines had been paid just yesterday and requested the case be dismissed.

MOTION BY MR. KOEPPPEL TO DISMISS THE CASE

SECONDED BY MS. DUEMLER

MOTION PASSED UNANIMOUSLY

- H. Case # 08-2576, 44 Cocoanut Row, # A112, Absolute Air Conditioning Inc.

Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and adopted 2004 Florida Building Code, Section 105, building permit required to construct, enlarge, alter, repair, move or demolish any building or structure

Lead Code Enforcement Officer Robert Walton requested both this case and case # 08-2577 be postponed to the next hearing date as some new information reference possible identity theft had just been brought to his attention and needed to be investigated. Mr. Walton said he had just learned that the individual who was presenting himself as Absolute Air Conditioning may not be the actual license holder.

**MOTION BY MS. GREENBERG TO POSTPONE THE CASE TO
DECEMBER 18, 2008
SECONDED BY MR. KOEPEL
MOTION PASSED UNANIMOUSLY**

- I. Case # 08-2577, 44 Cocoanut Row, #A622, Absolute Air Conditioning, Inc.
Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and adopted 2004 Florida Building Code, Section 105, building permit required to construct, enlarge, alter, repair, move or demolish any building or structure

**MOTION BY MR. OCHSTEIN TO POSTPONE THE CASE TO DECEMBER
18, 2008
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

- J. Case # 08-2578, 601 Island Drive, McAfee Electric
Violation of Chapter 42, Section 42-199 of the Town of Palm Beach Code of Ordinances, construction work outside permitted hours

Lead Code Enforcement Officer Robert Walton said the fine for the violation was paid and requested the case be dismissed.

**MOTION BY MR. KOEPEL TO DISMISS THE CASE
SECONDED BY MS. DUEMLER
MOTION PASSED UNANIMOUSLY**

- K. Case # 08-2579, 125 Hammon Ave., E. & Mary J. Extor
Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe and unsanitary conditions not permitted, Chapter 42, Section 42-87, exterior painted surfaces to be kept painted and in good condition and Chapter 42, Section 42-164 of the Town of Palm Beach Code of Ordinances, fugitive dust and blowing sand not permitted

Lead Code Enforcement Officer Robert Walton presented the facts of the case and

said it was the result of a citizen complaint. Mr. Walton said he had Ms. Extor's permission to tell the Board she had fallen and is presently in a nursing home rehabilitation facility. Ms. Extor has a caretaker on the property, Roger, but the work is more than he can handle. Ms. Extor has contacted Greg Batten and Joe Hart to complete the repairs on the house. Mr. Walton said he had a letter from Mr. Batten who said this project commencement was subject to the owner's approval and obtaining permits for the work. Mr. Walton said Ms. Extor told him today she had given Mr. Batten the approval to do the repairs. Mr. Walton said the Town recommended a finding of non-compliance, administrative costs in the amount of \$150.00 and the property owner be given until December 15, 2008 to come into compliance.

Joe Hart of Carpenter's Roofing was present and said he had known Ms. Extor for many years. Mr. Hart said Ms. Extor asked him to appear on her behalf and after looking at the property, he contacted Greg Batten. Both he and Mr. Batten believe they can bring the property into compliance by the deadline. Mr. Fried asked Mr. Walton if he believed this was a realistic time frame to get a contract, the permits and get the work done. Mr. Walton said there was an overnight plan review system and said the contractors believed it could be done. Mr. Fried asked if Mr. Hart was working as a sub under Batten and he said that was correct. Ms. Greenberg asked how long Ms. Extor had been in rehab and Mr. Walton said it had been several months. Ms. Greenberg said it appeared from the photos that the neglect had been going on for years. Mr. Koeppel questioned whether it was realistic for the work to be completed by December 15, 2008 and said he was suggesting the Board give the homeowner more time and would like to recommend that the compliance date be January 12, 2009. Mr. Walton requested that the permitting be done immediately and work commenced even if the additional time was granted. Ms. Duemler said she agreed with Mr. Koeppel's suggestion to grant the home owner additional time but thought Mr. Walton's recommendation should be part of the motion. Mr. Ochstein said he disagreed, that the property was dangerous and an eyesore and he did not believe it should be postponed. Ms. Van Buren said she agreed with Mr. Ochstein and Ms. Greenberg and said she had personal knowledge about the property. She said she had been contacted in the past by people at the property next door, the Winthrop House and their standard of living and lives had been disrupted for 5-8 years. Ms. Van Buren said an extension should not be granted. Mr. Koeppel said he was not suggesting the work should not be commenced immediately and diligently pursued but he does not feel it is realistic to get the work done by December 15, 2008 and rather than having the case come back to the Board again, he believes a more realistic compliance date should be set with the requirement that the work begin immediately. Mr. Hoffman asked Mr. Hart if he believed the work could be done and he said he could directly address the roofing portion of it and did not see a problem. His company utilizes the streamlined permitting process. Mr. Hart said Mr. Batten

told him by phone this morning the additional work could be completed by the December 15th date.

MOTION BY MR. KOEPPPEL THAT THE VIOLATOR BE FOUND IN NON-COMPLIANCE, ASSESSED ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND THE CONTRACTOR MAKE APPLICATION FOR THE NECESSARY PERMITS IMMEDIATELY AND THAT THEY DILIGENTLY AND EXPEDIOUSLY COMPLETE ALL OF THE WORK REQUIRED BY JANUARY 12, 2009

SECONDED BY MS. DUEMLER

MOTION OPPOSED

ROLL CALL VOTE:

MR. KOEPPPEL	YES
MS. DUEMLER	YES
MR. FRIED	NO
MR. OCHSTEIN	NO
MS. GREENBERG	NO
MS. VAN BUREN	NO
MR. HOFFMAN	NO

MOTION FAILED 5-2

MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL DECEMBER 15, 2008 TO COME INTO COMPLIANCE

MOTION SECONDED BY MR. FRIED

MOTION OPPOSED

ROLL CALL VOTE:

MR. OCHSTEIN	YES
MR. FRIED	YES
MR. KOEPPPEL	NO
MS. DUEMLER	NO
MS. GREENBERG	YES
MS. VAN BUREN	YES
MR. HOFFMAN	YES

MOTION PASSED 5-2

- L. Case # 08-2580, 269 Pendleton Ave., Mare Investments Inc.
Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe and unsanitary conditions not permitted and properties to be maintained in good condition

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said it originated from a citizen complaint. The property was inspected today and has been brought into compliance. No contact has been made with the property owners. Because the violation was not corrected before the time specified by the code enforcement officer but has been corrected prior to the hearing date, the Board may still consider the case. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and no further action be taken.

MOTION BY MS. GREENBERG TO FIND THE VIOLATOR IN NON-COMPLIANCE AND ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00

SECONDED BY MR. KOEPEL

MOTION PASSED UNANIMOUSLY

M. Case # 08-2581, 161 Main St., Laura T. Andrassy

Violation of Chapter 38, Section 38-35 (b) of the Town of Palm Beach Code of Ordinances, burglar alarm fees not paid

Sgt. Curtis Krauel said the case was referred to Code Enforcement by the Finance Department. The fines have been paid in full and the Town recommends the case be dismissed.

MOTION BY MR. FRIED TO DISMISS THE CASE

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

N. Case # 08-2582, 141 Australian Ave., Gregory J. Pamel

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 and all exterior surfacing material shall be kept painted in good repair and roofs shall be maintained so as not to leak

Lead Code Enforcement Officer Robert Walton presented the facts and said it was the result of a routine inspection. The property is still not in compliance. Mr. Walton said he has had several conversations with Dr. Pamel who has contacted Tim Cornelius of Dream House Renovations to complete the repairs. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and he be given until December 15, 2008 to achieve compliance.

MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HIM UNTIL DECEMBER 15, 2008 TO COMPLY

SECONDED BY MS. GREENBERG

MOTION PASSED UNANIMOUSLY

- O. Case # 08-2583 271 La Puerta Way, 271 La Puerta LLC
Violation of Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances, the maximum permissible emission of noise level is 64 dBA for day and 58 dBA for night

Code Enforcement Officer Nick Gerry said he was presenting the case on behalf of Code Enforcement Officer Weymer who is away at school this week. Mr. Gerry presented the facts of the case and said the property was still not in compliance. A notice was received from Tim Givens, the contractor retained by the owner, advising permits were being obtained to construct a sound barrier wall for the equipment but no work has taken place. Mr. Gerry said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and they be given until December 15, 2008 to come into compliance. Mr. Fried asked what the sound level of the equipment was and Mr. Gerry said it was 65.4 dBA which exceeds both the day and night time allowable noise level. Mr. Koepfel asked if a building permit has been pulled for the wall and Mr. Gerry said he did not believe it had been but it may be in review. Mr. Koepfel asked if the construction of the wall would solve the problem and Mr. Gerry said Staff did not recommend a wall be built, only that the sound level of the equipment be reduced. A change in the air conditioning equipment might also solve the problem. Bill Bucklew was present on behalf of Jeff Taylor of the Building Department. He said the permit had been submitted and was in review. Mr. Bucklew said the wall should deaden the amount of noise coming out of the equipment if it was properly installed.

**MOTION BY MR. KOEPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL DECEMBER 15, 2008 TO COMPLY
SECONDED BY MS. DUEMLER
MOTION PASSED UNANIMOUSLY**

(Mr. Hoffman acknowledged the presence of Councilwoman Susan Markin in the audience and thanked her for her attendance and interest in the proceedings)

- P. Case # 08-2584, 211 Orange Grove Road, Joan G. Booth
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, all exterior surfacing material shall be kept painted and in good repair

Code Enforcement Officer Nick Gerry presented the facts of the case and said the homeowner had contracted a painting contractor and the work was due to begin. Due to the homeowner's cooperation, the Town recommends the case be postponed to December 18, 2008.

MOTION BY MR. FRIED TO POSTPONE THE CASE TO DECEMBER 18,

2008

**SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

Q. Case # 08-2585, 242 Cherry Lane, Charles W. Smith

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 and all exterior surfacing material shall be kept painted in good repair and roofs shall be maintained so as not to leak

Code Enforcement Officer Nick Gerry said this case had been discovered on routine patrol by Code Enforcement Officer Weymer. The property is currently vacant and the exterior surfaces have been deteriorating. A letter was received from the property owner requesting additional time to correct the violations. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give him until December 15, 2008 to come into compliance. Ms. Duemler asked if the homeowner advised who was going to be doing the work and when it was expected to be completed. Mr. Gerry said the letter just advised the homeowner had found someone to do the work but Mr. Weymer may have that information. Ms. Van Buren asked what the compliance date given to the homeowner was and Mr. Gerry said both a warning letter and a notice of violation had been sent and the final compliance date was November 14, 2008.

**MOTION BY MR. KOEPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND TO GIVE HIM UNTIL DECEMBER 15, 2008 TO COMPLY
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

VI. Old Business:

A. Case # 08-2432, Beachfront Vista Property, Nightingale Beach Club Association

Violation of Chapter 134, Section 134-1472 (3) of the Town of Palm Beach Code of Ordinances, no additional walls, fences, hedges or other structures or growth shall be

erected or be grown eastwardly of Ocean Boulevard to a height greater than four (4) feet above the surface of the Ocean Boulevard

Lead Code Enforcement Officer Robert Walton said this property had previously been found in non-compliance at the July 17, 2008 meeting and a daily fine of \$250.00 a day was ordered, commencing on November 8, 2008. The Town recommends the fine currently running be held in abeyance as Town Council is

going to review the ordinance the property was cited under. The issue is on the December Council agenda.

MOTION BY MS. GREENBERG TO HOLD THE \$250.00 A DAY FINE CURRENTLY RUNNING AGAINST THE PROPERTY SINCE NOVEMBER 8, 2008 IN ABEYANCE UNTIL AFTER THE DECEMBER TOWN COUNCIL MEETING

SECONDED BY MR. FRIED

MOTION PASSED UNANIMOUSLY

VII. Fine Consideration:

A. Case # 08-2540, 280 El Pueblo Way, Thomas Frankel

Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and adopted 2004 Florida Building Code, Section 105, building permit required to construct, enlarge, alter, repair, move or demolish any building or structure

Lead Code Enforcement Officer Robert Walton said the case was heard at the September 18, 2008 hearing and the property owner was found in non-compliance and given until September 26, 2008 to comply. The case should have been heard at the October 16, 2008 hearing but both the property owner and his attorney requested a postponement. The Board had previously given the property owner until September 26, 2008 to come into compliance but the property did not come into compliance until October 14, 2008, a period of 17 days. The Town requests a fine of \$75.00 a day for the 17 days out of compliance.

Sherry Hyman was present on behalf of Mr. Frankel and thanked the Board for postponing the hearing. Ms. Hyman said Mr. Frankel's contractor made a mistake by doing work without a permit. Mr. Frankel had the contractor immediately make application to the Town for the permit and paid the \$250.00 fine assessed against the contractor. Ms. Hyman said Mr. Frankel also paid a \$100.00 expedited review fee to get the permit issued as soon as possible. The permit was returned for additional information and Mr. Frankel again paid a \$100.00 fee for an expedited review. The permit was not issued by the Town until October 2, 2008 and the administrative fee of \$150.00 was paid as well. Ms. Hyman said her client had done his best to come into compliance as soon as possible but was at the mercy of the contractor. Ms. Hyman asked that no additional fine be imposed.

Ms. Greenberg asked that the fine amount be clarified and Mr. Walton said it was \$75.00 a day. Mr. Koepfel asked for a clarification on some of the dates and Mr. Bucklew detailed the permit application process and dates again. Mr. Koepfel said it seemed to be an impossibility based on the sequence of events to get the work done by the September 26, 2008 compliance date. Mr. Walton said the expedited review

just guarantees a review of the permit, that the application must still be complete for the permit to be issued. Mr. Koeppel said the owner tried to comply as quickly as possible and he believes it is inappropriate to have a fine. He said it is a problem when the Board gives a date which may be unrealistic and causes people to come back for fine considerations. Ms. Van Buren said she agreed with Mr. Koeppel, that there were numerous things out of the homeowner's control, but she felt a fine of some sort was appropriate. Mr. Fried said he agreed with Ms. Van Buren. Ms. Hyman said Mr. Frankel could not be at the September hearing and asked for a postponement which was not granted. Ms. Hyman said the bottom line is that Mr. Frankel did his best to comply and is in compliance and she does not believe it deserves a fine. Mr. Ochstein said the Town issued the permit as soon as it could as the fault lies with the incomplete applications and he believes there should be a fine. Ms. Hyman said the contractor had already had a fine imposed which Mr. Frankel had paid. Ms. Duemler suggested a fine of \$637.50 which is half of what the Town is asking.

**MOTION BY MR. KOEPPEL TO IMPOSE A \$250.00 FINE
MOTION DENIED FOR LACK OF A SECOND**

**MOTION BY MS. VAN BUREN TO IMPOSE A FINE IN THE AMOUNT OF
\$637.50
SECONDED BY MS. DUEMLER
MOTION OPPOSED**

ROLL CALL VOTE:

MS. VAN BUREN	YES
MS. DUEMLER	YES
MR. FRIED	YES
MR. KOEPPEL	NO
MR. OCHSTEIN	YES
MS. GREENBERG	YES
MR. HOFFMAN	YES

MOTION PASSED 6-1

- B. Case # 08-2563, 416 Brazilian Ave., James H. Barker & Kenneth W. Douglas, Jr.
Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, buildings or structures in such a dilapidated condition as to be unfit for human habitation prohibited and Chapter 42, Section 42-87, foundations and structural members to provide a firm and substantial support and interior walls and ceilings to be structurally sound

Lead Code Enforcement Officer Robert Walton said there was a finding of non-compliance at the October 16, 2008 hearing. No permit has been applied for and the

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Town is requesting a \$250.00 a day fine, commencing on October 15, 2008 and continuing until compliance is achieved. Mr. Walton presented some photographs to the Board and said the State Health Department has been contacted and is monitoring the situation for blowing dust and debris.

Maura Ziska was present to speak on behalf of Mr. Barker. Mr. Barker and Bill Yurasek, a licensed structural engineer, were also present. Ms. Ziska said she was not retained until after the meeting last month but she did hear the discussion about the condition of the property at last month's meeting. Ms. Ziska said Mr. Barker is requesting an extension of time to complete the renovation of the house. She said everyone is aware of the fire and the fact a life was lost, a dog's life was lost and it was a very tragic situation. Mr. Yurasek determined the house could be saved and the first floor debris has been cleaned out. Ms. Ziska distributed a completion schedule from the structural engineer. There was no insurance on the property and none on the millions of dollars of artwork. Mr. Barker had Wachovia committing to a \$900,000 mortgage earlier this year but that had been rescinded due to the economy. Mr. Barker has 2 mortgage brokers working on financing as well as private individuals who are interesting in helping fund the renovation. Mr. Barker is requesting additional time and she does not feel imposing a fine will help get the project done.

Mr. Fried asked about a requirement in the motion that the roof be tarped. Mr. Walton said that did not make it into the motion, that there was some discussion and the minutes were reviewed. Mr. Walton said it is very difficult to tarp such a large structure. The tarp catches wind like a sail and may hold water and cause further destruction. Mr. Fried said the roof looks like a very dangerous situation. Mr. Fried said if the Board decided to impose a fine, that it would be more in line of an incentive to get the project moving. The Board could later hear a fine reduction or even forgo a fine. Ms. Ziska said she could come back on a monthly basis and update the progress. Ms. Van Buren told Mr. Barker he had her sympathy for the terrible tragedy that had befallen him and she was sure it would take him many months to recover from it. Ms. Van Buren said she agreed with Mr. Fried that the house was in a dangerous situation and wanted to know what could be done from a safety issue standpoint. Ms. Ziska said the debris had been cleaned from the first floor and now the second floor needs to be cleaned. Ms. Ziska said she had consulted with the structural engineer about the tarp situation and he believed it might

exacerbate a bad situation. She said she would defer to the engineer as to whether there is a way to temporarily close in the roof. Bill Yurasek said they did investigate the idea of putting tarps on the roof but the problem is it would concentrate water on the second floor of the structure and could create additional damage. The plan is to clean out the second floor and take the debris weight off of it, then go in and brace the second floor, replace the studs on it and then put a roof on. To put a tarp on the roof at this point would be a band aid and could increase damage. Mr. Ochstein extended his sympathy to Mr. Barker and said the Board should do what it could to assist and would not be in favor of any kind of fine.

Mr. Barker said he has nerve ending deafness and did not hear a lot of what was said today. Mr. Barker said he had cleared the ground floor of the house by himself and had the debris removed. Mr. Barker said none of his close friends in the building next door had complained except for having to look down on the horror of a bad fire that killed James Hayman and destroyed things he should have given to museums years ago. Mr. Barker said he had arranged for a reverse mortgage from Wachovia Bank but that had fallen through. Mr. Barker said he had two different brokers trying to raise the money. He does not know why Mr. Walton believes he needs to be fined. He said he is embarrassed by the whole thing but he believes items on the second floor can be saved and he wants to do the work himself. He asked the Board to take pity on him.

Mr. Fried said the Board's duty is to protect and preserve the safety of the community. Mr. Fried asked Mr. Yurasek if he could construct a roof over the roof and Mr. Walton said the structure was too insecure for that. Mr. Walton said the concern for the neighborhood and the Town's liability is why a daily fine is being requested. Mr. Fried asked if a financier could be moved to act more quickly if there was a daily fine accumulating and Ms. Ziska said a lien is placed on the property when a fine is assessed and becomes an incumbrance on the property. Mr. Fried asked if a fine became a lien immediately and Mr. Randolph asked Recording Secretary Houston when that occurred. Ms. Houston said a lien is filed if the administrative costs are not paid within 10 days of the Board order or immediately when a fine starts running. Mr. Randolph said the Code Enforcement Board is equal to a tax lien and takes precedence over a first mortgage. Mr. Hoffman asked Mr. Yurasek about the 10 month construction schedule he had presented the Board, how that could be expedited. Mr. Hoffman said a lot of it was predicated upon financing and that concerned him. Mr. Yurasek said it could be done much quicker if there was more money. Mr. Yurasek said he put down a liberal time period for compliance so they would not have to come back before the Board. Mr. Hoffman asked what a reasonable time frame would be once financing was achieved. Mr. Yurasek said if they had cash and a building permit in hand, the work could be completed in 6 months. Mr. Hoffman asked when the financing was applied for and Mr. Barker said it was immediately after the fire. After the Wachovia deal fell through, he tried to get a new mortgage from Bank of America. He is also trying to get a reverse mortgage on his house in Maine. Mr. Barker said the house is a Marion Sims Wyeth house

and can be restored. Mr. Barker said he is living in the little house behind the main house. Mr. Walton said after hearing all the discussion, the Town still recommends a \$250.00 a fine day, commencing on the day after the compliance date. Mr. Fried said he was more inclined to postpone the fine hearing until next month and Ms. Ziska said she would take more of a personal involvement in trying to figure out the financing and button up the construction schedule. Mr. Fried asked Mr. Walton if it was safe for someone to be in the house and Mr. Walton said it was not. Mr. Yurasek said he had been on both floors of the house and he did not believe it would collapse. His concern was a major storm event during hurricane season and that did not

happen. Mr. Yurasek said he could not control Mr. Barker's activity in the house. Mr. Koeppel asked if the debris on the second floor could be removed without doing any other work and Mr. Yurasek said that was their plan. Mr. Koeppel asked what the white material in the photographs was and Mr. Walton said it may be plaster. Mr. Walton said he wanted to remind the Board that the house has sat in this condition for 7 months and once again asked that the Board approve the Town's fine recommendation of \$250.00 a day. Mr. Koeppel asked Mr. Yurasek if the debris could be removed any quicker and Mr. Yurasek said the removal of the debris would all be hand labor as a machine could not be used. Mr. Koeppel said it is not in the best interest of the Town or Mr. Barker to impose a fine at this time as it could impact his ability to get financing.

**MOTION BY MR. KOEPPEL TO POSTPONE THE CASE UNTIL
DECEMBER 15, 2008
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

- C. Case # 08-2564, 44 Coconut Row, #A112, Helle R. Orav
Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and the Florida Building Code, building permits are required to construct, install, repair or alter any building or building system

Lead Code Enforcement Officer Robert Walton said the Town recommends an extension of the Board order date for compliance in this case be extended until the December 18, 2008 hearing.

**MOTION BY MR. KOEPPEL TO EXTEND THE TIME FOR COMPLIANCE
IN THIS CASE UNTIL DECEMBER 18, 2008
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

VIII. Fine Reduction:

- A. Case # 07-2083, 2565 S. Ocean Blvd., # 222, Eugene & Elinor McAuliffe
Violation of Chapter 18, Section 18-242 of the Town of Palm Beach Code of Ordinances and the Florida Building Code, building permits are required to construct, install, repair or alter any building or building system

Lead Code Enforcement Officer Robert Walton said there was an outstanding fine on

this property of \$121,400.00. Mr. Walton said compliance has now been achieved in this case and the fine has stopped running. Maura Ziska was present on behalf of the property owner, along with Dennis and Moira McAuliffe, who is Mrs. McAuliffe's daughter. Ms. Ziska said it was a sad story that goes back a few years. The family had owned the condo for 35 years and Mr. McAuliffe died 15 years ago. After Mr. McAuliffe died, the power of attorney for Mrs. McAuliffe was given to an attorney in Massachusetts. Ms. McAuliffe is now 82 years old. Ms. McAuliffe never received any mail reference the violations or board orders as the mail was being forwarded to the attorney in Massachusetts who did not make Ms. McAuliffe aware of any problems. The power of attorney eventually got transferred to another attorney and Mr. Walton was able to locate Dennis McAuliffe through this new attorney.

A contractor, Jeff Sullivan, was immediately hired and the property was brought into compliance. The McAuliffes are asking for a reduction of the fine to a nominal amount, perhaps a \$1000.00 based on the circumstances. There is an investigation going on in Massachusetts reference the actions of Mrs. McAuliffe's attorney. Mr. Koeppel asked Mr. Walton what the Town's recommendation was and Mr. Walton said the Town does not usually make recommendations in fine reduction hearings but would not be opposed to Ms. Ziska's offer. Mr. Fried asked for the history of the case and Mr. Walton gave an overview of the dates and the history. He also said it had continued so long because there were problems with service. Mr. Walton said the property ended up being posted.

**MOTION BY MR. KOEPPEL TO REDUCE THE FINE TO \$1000.00
SECONDED BY MS. DUEMLER**

During discussion on the motion, Mr. Fried said even though there were compelling extenuating circumstances, he believed this might be too drastic a reduction and thought it might be better to reduce the fine to \$15,000 to \$20,000. Ms. Greenberg asked what the value of the apartment was and Mr. Walton said he assumed the fine was close to the value of the property.

Moira McAuliffe Watros addressed the Board and gave an emotional statement about the problems the family had encountered with her father's death, the death of her brother who her mother cared for during his illness and the problems with the attorney who was supposed to be looking after her mother's interests. Ms. Watros said she went to the law firm and begged for dual power of attorney because they wanted to put her mother in a nursing home. The attorney was going to put her mother in a nursing home so he could sell her properties but Ms. Watros was able to get power of attorney and the attorney was fired. She said she was sorry this happened and if the fine could be reduced, it would give her mother her life back.

Mr. Fried said he withdrew his earlier remarks. Mr. Ochstein said this was a large fine reduction and he was reluctant to do it.

**MOTION BY MR. KOEPEL TO REDUCE THE FINE TO \$1000.00
SECONDED BY MS. DUEMLER
MOTION PASSED UNANIMOUSLY**

Mr. Randolph said he believed it would be a good idea if it was added to the motions that the fine be paid within a time certain or if it was not paid within 30 days, the fine reduction would be negated and the fine would revert back to the original amount. Mr. Randolph recommended that this be added to future motions as fines have been reduced in the past and remain unpaid. Mr. Hoffman said that was a good comment.

B. Case # 07-2266, 159 Sunset Ave., 159 Sunset Ave. LLC & William Bell
Construction

Violation of Chapter 18, Section 18-242, Subsection 104.5.1.6, medium projects, all new or remodel construction projects 4,000 sq. ft. to 8,999 sq. ft. under roof be allowed 22 months

Lead Code Enforcement Officer Robert Walton said the fine due in this case is \$31,650.00. Maura Ziska said she was present on behalf of Bud Palmieri, the owner of the property and she was going to have him speak. Mr. Palmieri said the original notice of commencement was filed April 19, 2005 and a permit was not received until August, 2005. The certificate of occupancy was March 14, 2008. The project was finished February 2, 2008 and it took the Town another month to issue the certificate of occupancy. There were the problems with the hurricanes and then when they went to get their final inspection, there was a problem with the fireplace, whether or not it could be in the bedroom or not. Mr. Hoffman said the Board was more interested in what took place after the fine was instituted. When he was noticed of the Board hearing, he was given 30 days to complete the project and the issue of the fireplace came up. After several months of talking to the Building Department, the fireplace was finally approved. Mr. Palmieri said he was requesting a fine reduction. Ms. Van Buren asked Mr. Walton what the completion date was supposed to be and he said he could not tell her, that he just knew the completion date was February 22, 2008. The fine stopped running after the final building inspection and did not run to the certificate of occupancy date. The final inspection was due on November 28, 2006. The property was out of compliance 126 days. Mr. Palmieri said this was about the length of time the fireplace was an issue. Mr. Walton told Mr. Palmieri that typically when someone addressed the Board, they gave a figure they would like to see the fine reduced to. Mr. Palmieri said he would like to see it all gone but if he could get half, he would be a happy guy.

Mr. Ochstein said the house was beautiful and was not a big nuisance at any time during construction. He said he recommended some leniency from the Board. Mr. Koepel asked if there was anyone who could give the Board some data relative to the fireplace. Mr. Walton said he was not aware of the facts that were being presented and did not have anyone present to speak about the fireplace issue. Mr. Hoffman asked if the fireplace issue took place before the Board instituted the fine and Mr. Palmieri said that was correct. Mr. Palmieri said he could never get a final

inspection because that issue was pending. Mr. Bucklew said it appears the issue with the fireplace was the amount of combustion air that was available for the fireplace as far as the Code was concerned. Mr. Koeppel said he recommended the case be postponed to next month. Mr. Palmieri said when he came before the Board he was going through the CO process and the fireplace was the last issue which took several months to decide the outcome. Mr. Fried asked if the Board was aware of the fireplace issue when the fine was imposed and Mr. Palmieri said it was not.

**MOTION BY MR. KOEPPEL TO POSTPONE THE CASE UNTIL
DECEMBER 18, 2008
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

IX. Foreclosure Hearing

- A. Case # 08-2477, 215 Colonial Lane, Susan C. Lee Trust
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, roofs to be maintained so they will not leak and all exterior surfacing material to be kept painted and in good repair

Lead Code Enforcement Officer Robert Walton requested this case be withdrawn from the agenda as the accumulated fines up to date have been paid and her attorney had written the Town a letter agreeing to complete the repairs. The fine will continue to run but she has come current on the daily fine. A check was wired in today and he will be meeting with a builder next week to get the property into compliance. Ms. Duemler asked if the \$54,000 fine had been paid to the Town and Mr. Walton said that was correct.

VIII. Comments:

Ms. Duemler said she wanted to bring up the subject of waste bags for pets while Ms. Markin was present. She said there was one on Jamaica Lane and the next one is almost a mile away on Via Palma. Ms. Duemler said she counted about 9 bags of dog waste in one hedge just this morning and the receptacles need to be closer together. Ms. Duemler said the Town should consider putting receptacles closer together to make it easier for people to comply. Susan Markin said this was a subject she was interested in and there was the need for more receptacles, better enforcement of the Code and an enhancement to the Code. She had suggested it be put in the Code that a waste bag must be visible when one is walking a dog. She has recommended more receptacles on the bike path but it is more difficult to place them in residential areas. Ms. Duemler asked if biodegradable bags would be better. Ms.

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Markin said this might make people more apt to improperly dispose of the bags and she thought more enforcement was the key. Ms. Markin said she would take it as a suggestion and bring it up at the Council meeting that the number of receptacles be increased.

Ms. Markin asked if there was any reason why the fines imposed or recommended are not listed on the agenda. Mr. Randolph said that could be done but at a violation hearing, a fine could not be imposed. There is a separate hearing for a fine. If the code enforcement officer has a recommendation, that could be listed on the agenda under the item. Ms. Markin said that would be helpful to see on the agenda. Mr. Randolph asked if she was referring to a code reduction hearing. Ms. Markin said she would like to see what the original fine is prior to someone seeking a reduction. Ms. Markin said she applauded the Board's patience in listening to all of the issues and their heartfelt responses. Mr. Hoffman told Ms. Markin the Board appreciated her interest and any Council members in attending the meeting.

Mr. Hoffman again asked the Board to not offer a motion until all discussion had taken place.

IX. Adjournment:

The meeting was adjourned without benefit of motion.