

**TOWN OF PALM BEACH
CODE ENFORCEMENT BOARD MINUTES**

THURSDAY, OCTOBER 15, 2009, 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: (2:00:07 p.m.)

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

(Mr. Hoffman welcomed Council Member Diamond and said the Board appreciated his interest. He also noted that the counsel for today would be Jennifer Ashton from Jones, Foster.)

II. Roll Call: (2:00:27 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 Jennifer G. Ashton, Captain John Maio, Captain Fred Hess, Lead Code Enforcement Officer Robert Walton and Recording Secretary Raychel Houston

III. Approval of the Minutes of September 17, 2009: (2:00:51 p.m.)

**MOTION BY MR. KOEPEL FOR APPROVAL OF THE SEPTEMBER 17, 2009
MINUTES**

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

IV. Administration of the Oath to all persons who wish to testify: (2:01:10 p.m.)

All persons wishing to testify were sworn in at this time by Recording Secretary Houston.

(Prior to the public hearings, Mr. Hoffman asked if any Board member has had any ex parte communication on any case to please announce it at the time the case was heard.)

V. Public Hearings:

- A. Case # 09-2655, 2295 S. Ocean Blvd., 2295 South Ocean Blvd. Corp
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, appurtenances such as signs to be maintained in a good state of repair

Lead Code Enforcement Officer Walton said this case was postponed from the previous meeting but Harbour House still did not have a permit from the Town because they had not been able to get a FDOT permit.

Paul Lockard, General Manager of 2295 South Ocean Blvd. Corp. was present and distributed a chronology of the action they had taken from the time of the code violation notice. He said the permitting process was started with FDOT in July and the permit application was returned to them in September, requesting what he called a break-away sign which required them to do some re-engineering on the design. That has been completed and delivered to FDOT and they are awaiting their review and approval. Mr. Hoffman asked how much time they needed and Mr. Lockard said until December or January. Mr. Walton said the Town had no objection to postponing this case until the January hearing.

MOTION BY MR. KOEPEL TO POSTPONE THIS CASE UNTIL JANUARY 21, 2010

**SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

- B. Case # 09-2673, 1 Via Los Incas, Elizabeth Polsterer
Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and swimming pools to be maintained in a clean and sanitary manner

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a citizen's complaint. The pool is now in compliance but it did not come into compliance in the time allowed by the Town. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and no further action taken.

MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND NO FURTHER ACTION TAKEN

**SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

C. Case # 09-2674, 300 Barton Ave., Jane H. Janssen

REPEAT Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and yard grass not to exceed 8 inches in height and Chapter 42, Section 42-87, all exterior surfacing material to be in good repair and windows and light fixtures to be maintained in good condition

Lead Code Enforcement Officer Walton presented the facts of the case and said this was a repeat violation as the property owner was previously found in violation of the same Codes on October 19, 2006. The property has not been brought into compliance although the grass was cut. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give the property owner until October 30, 2009 to come into compliance.

Peter Broberg spoke on behalf of the property owner, Ms. Janssen and said he represented her on the next case as well and the explanation would be the same for both. Mr. Broberg said Ms. Janssen and her husband do not live on the property and have two sons, one in The Hague and the other in Rhode Island, who are trying to manage the maintenance of the property. He said the son in Rhode Island told him today they had convinced Ms. Janssen to sell the house. Mr. Broberg asked for more time than October 30th for compliance because the owner is not able to take care of the issues herself and the maintenance is being done from a distance. Mr. Walton asked Mr. Broberg if there was someone locally to take on the maintenance of the property. He said this would be a topic he would discuss with the son in Rhode Island to see if someone could take care of the property until it sold. Mr. Walton said someone would have to do this as the property had fallen into a state of disrepair and asked Mr. Broberg how much time he was requesting. Mr. Broberg said he would like to have until the next meeting. Mr. Fried asked if the house was visible from the road and Mr. Walton said it was. Mr. Ochstein said he would be inclined to give less time for compliance.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL OCTOBER 30, 2009 TO COMPLY
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

D. Case # 09-2675, 300 Barton Ave., Jane H. Janssen

Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, abandoned/non-operative vehicles not permitted on property and stagnant water providing harborage for mosquitoes not allowed and Chapter 106, Section 106-159, a clearance of 8 feet, measured vertically from the edges and

extending the full width of all sidewalks and bike trails in the Town to be maintained at all times for the unobstructed passage of pedestrians and others using such sidewalks and bike trails

Lead Code Enforcement Officer Walton presented the facts of the case and said it was also the result of a citizen complaint. The property is still not in compliance although the hedges have been trimmed and the pond drained but it is starting to fill up again and is going to be an ongoing problem as a mosquito harborage. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give the property owner until October 23, 2009 to come into compliance.

Peter Broberg, who is representing the property owner on this case as well, asked why the compliance time in this case was shorter and Mr. Walton said these issues were simple to rectify. Mr. Broberg said the vehicle should have been towed by now but there is a title problem which will be resolved on Monday or Tuesday of next week and the vehicle will be towed to a junkyard. The pond was drained and cleaned and some disinfectant was left to "shock" the bottom and it will be drained again. Mr. Broberg asked the Board make both compliance dates the same and Mr. Walton said he had no objection to that.

**MOTION BY MS. VAN BUREN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL OCTOBER 30, 2009 TO COMPLY
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

E. Case # 09-2676, 249 Peruvian Ave., # R-2-1, Min Y Jo LLC

Violation of Chapter 18, Section 18-241 and Section 18-242 of the Town of Palm Beach Code of Ordinances and adopted 2004 Florida Building Code, Section 105, building permits are required to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure or to install, alter, repair, move, convert or replace any electrical, mechanical or plumbing system

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a complaint. The property is still not in compliance because no permits have been pulled or applications submitted. Because of the extent of the work, a general contractor will be required. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and they be given until November 16, 2009 to obtain permits and have ongoing work continue until the project is completed.

Ted Beacham was sworn in by Recording Secretary Houston and said he represented Dr. Nasser who is the owner of the property. Mr. Beacham gave a brief history of the property which resulted in him selling his interest to Dr. Nasser. Mr. Beacham said permits have been applied for and Mr. Walton asked

him to present those to William Bucklew, who was present representing the Building Official, Jeff Taylor. Mr. Bucklew reviewed the permits and said these were the same ones that were brought into the Building Department this morning. The applications were not complete and there were no drawings and they were rejected. There was a permit submitted in September to replace some sliding glass doors but that was also rejected because all of the information was not there.

A woman who only identified herself as Tina, Dr. Nasser's assistant, said she has been to the Building Department three times and every time she needs something else. Mr. Walton asked who the general contractor was on the project and Tina said it was Meredith McCandless. Mr. Walton asked Tina if she was in the employment of that general contractor and she said she was just a "runner". Mr. Walton said a general contractor is needed on this job because this is a condominium unit and there are other tenants. The Building Department cannot issue an owner/builder permit. Mr. Bucklew said he was present when Tina met with Mr. Taylor and Mr. Taylor told her step by step what was needed.

Mr. Hoffman asked Mr. Beacham why all the demolition and work was started without permits. Mr. Beacham said he was doing some work for an individual he thought was a contractor and this person offered to do some minor repair work in the unit. This individual later met Dr. Nasser when Mr. Beacham transferred title to her and told Dr. Nasser he would be able to do the renovation work she wanted. Dr. Nasser did not know he was not licensed or authorized to do business on the Island. This individual sent her a bill for \$1500-\$2000 for work which was inexpertly done and told her if she did not pay him, he would go to the Town and reveal that he was not licensed in Palm Beach, which he did. Mr. Beacham said he believes this is criminal extortion and this person is trying to make the Town his collection agency for work illegally done. Mr. Walton said he would be happy to send a notice of violation to this individual if Mr. Beacham would give him the information after the meeting today.

MOTION BY MR KOEPPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL NOVEMBER 16, 2009 TO OBTAIN PERMITS AND HAVE CONTINUOUS AND SUBSTANTIAL WORK ONGOING

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

- F. Case # 09-2677, Ibis Isle Seawall, Ibis Isle Central Condominium Association, Inc. & Vogell Marine Inc.

Violation of Chapter 18, Section 18-241 and Section 18-242 of the Town of Palm Beach Code of Ordinances and Florida Building Code 2004, Section 105, building permits are required to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a routine inspection. He was on Ibis Isle as the result of a noise complaint and saw Vogell Marine repairing the sea wall at the north end of Ibis Isle. Mr. Walton said he contacted the Building Official, Jeff Taylor and was told a building permit was required from the Town. Vogell Marine did have the appropriate environmental permits. Mr. Walton said he received a letter from Vogell Marine advising they were not aware they needed a Town permit because they are not required to pull building permits for this type of work in Palm Beach County. According to the letter, Vogell Marine had contacted the Town and was told they needed an application and signed and sealed prints from a structural engineer which they said they would not be able to obtain by the date given for compliance and were requesting additional time. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until November 16, 2009 to obtain a permit and have all inspections completed.

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

SECONDED BY MR. BALLENTINE

MOTION PASSED UNANIMOUSLY

G. Case # 09-2678, 254 Sunrise Ave., Preferred Parking Solutions

Violation of Chapter 118, Section 118-151 (2) of the Town of Palm Beach Code of Ordinances, using parking lots outside of permitted use for commercial gain

Captain Hess presented the facts of the case and said the issue is that Preferred Parking Solutions is not authorized to use the Wachovia Bank parking lot for valet parking and were previously cited by Sgt. Krauel for this violation.

Laurie Gegan, the owner of Preferred Parking, was present and said he was not present to dispute what they were able or not able to do at this location. After investigating and speaking with the valets and a few people who were present that night, he discovered the valet knew not to park cars in the Wachovia lot. The individual in question actually parked his car in the lot, came by the valet and flipped him the keys and said to take care of his car for him. The valet got busy with some other cars and did not get back to this car to move it. The valet was busy because the loading zone was blocked and he had to take cars on the street. Captain Hess saw the valet getting the car from the bank parking lot for the individual who came out of the restaurant and thought the valet put it there. Mr. Gegan asked the Board to consider the circumstances.

Captain Hess said he was not aware who put the car on the lot and knowing the individual whose car it is, believes this is what happened. Due to this information

and the fact that Preferred Parking no longer has the contract for valet at this location, the Town recommends the charge be dismissed.

**MOTION BY MS. GREENBERG TO DISMISS THE CASE
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

H. Case # 09-2679, 251 Sunrise Ave., 251 Partners LLC

Violation of Chapter 42, Section 42-196 and Section 42-197 of the Town of Palm Beach Code of Ordinances, creating noise that annoys and disturbs the comfort and peace of a considerable number of persons and Chapter 42, Section 42-228, noise in excess of the maximum dBA level allowed for the geographic area

Captain Hess said there was an attorney present who planned to ask for a continuance. He suggested the issue of whether or not the case would be heard be resolved before the case was presented.

James Crowley from the Gunster Yoakley law firm said he was present on behalf of 251 Partners LLC. Mr. Crowley said he sent a letter to Mr. Randolph yesterday requesting a continuance and he wanted that letter to be part of the record. Mr. Crowley presented his argument for a continuance and said he was asking for a continuance of at least two weeks.

Captain Hess said the Town objects to the granting of a continuance and presented his reasons. Mr. Ochstein said he did not believe a postponement was a good idea and Mr. Ballentine concurred with that. Ms. Van Buren said she did not want to entertain the idea of a continuance as she was looking at three witness statements from people who wanted to prosecute and the Board needed to start looking at the case hard and resolve it.

**MOTION BY MR. FRIED TO HEAR THE CASE
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

Captain Hess presented the facts of the case and said it was a repeat violation with a fine of \$500.00.

Cynthia Simonson addressed the Board and said she purchased the three units directly above 251 prior to the opening of the restaurant. She has stayed at the property periodically and can attest it is impossible to get to sleep until after 3:00 a.m. In addition, there is an intense vibration continuously from about 9:00 p.m. to 3:00 a.m. so it is not only a sound issue, it is a vibration issue.

Councilman Diamond said this matter came before the Town Council the other day and they are very concerned. The Town Council is aware there is litigation actively going on between the condominium and the owners of the nightclub.

Ms. Van Buren asked about the length of the lease 251 Partners LLC had at the hotel. Gus Renny, a partner in 251 Partners LLC, said it was a 5 year lease with two 5 year options. He said he wanted it noted for the record that it is not a club; it is a restaurant/lounge. Ms. Van Buren asked when the lease started and Mr. Renny said it was in February. Mr. Peloso asked if the hotel was the owner of the commercial areas and Mr. Walton said it was a condominium unit owned by an individual or a corporation. Mr. Peloso asked if there was any kind of association regulations and Mr. Walton said the manager and the president of the association was present and those questions could best be addressed by them.

Dick Spielberg, president of the condominium association and Randy Inman, General Manager were sworn in by Recording Secretary Houston. Mr. Spielberg said the original Club 251 closed in 2001 for a variety of reasons. This past February they approached the Board in conjunction with the owner of the property and said they were going to open a restaurant and lounge. They opened in March and it was a disco and nightclub. It was approved as a restaurant/lounge and the board rescinded their approval after it opened up as it did, however, the contract was already signed and was in place.

Ms. Ashton advised Mr. Crowley he had the right to cross examine any of the witnesses. Mr. Crowley said he would like to make his presentation first. Mr. Crowley said he did not believe the notice met the code requirements because the facts constituting a violation are not posted anywhere on the notice. Their position is that all of the noise ordinances must be read together in order to give them proper meaning and context. The Florida constitution requires that objective criteria be used to enact ordinances such as this. Mr. Crowley quoted case law from several cases. He argued that the Town's requirement that three complaints be filed should require that three complaints be filed that demonstrate that the law has been broken, that the noise readings were over 58 decibels at the time the officers were there. Given the number of units in the building, he does not believe that 3 people constitute a considerable number. Only one of the three complaints rose to the level of a violation and they do not know how the calibration was made because they cannot cross examine the officer who made the calibration. They need to know what kind of background noise there was and where this calibration was taken. There is no proof the actual levels in the Code were exceeded without this information. In addition, the sound level readings were made within the apartment as opposed to on the property lines as the Code requires.

Mr. Hoffman advised Mr. Crowley that the argument he was making was beyond his expertise and he believed beyond the expertise of most of the Board. Mr. Crowley said this is the only opportunity he has to make a record in case they need to appeal any decision that is made. He said part of his legal argument is

that all of the code provisions need to be read together. Of the three complaints filed, only one rose to the level of a code violation using the noise meter. The burden of the Town is to prove by clear and convincing evidence they violated the Code. He also does not think the evidence is reliable about the 50 to 60 decibels which is a huge window unless they have the police officer here to testify.

Mr. Renny addressed the Board again and said they have applied to the HOA to install additional soundproofing, to spray the joists and the entire ceiling with a product called Icynene but they have not gotten the approval yet. This will cost \$35,000 to \$45,000. Mr. Hoffman asked if this would mitigate the problem and Mr. Renny said there are no absolutes but the engineering shows it would drastically reduce the complaints. Mr. Hoffman asked when the soundproofing would be installed. Mr. Renny said once they had approval from the HOA and their landlord, they will obtain permits from the Town and install it immediately.

Captain Hess said some of the issues addressed by Mr. Crowley are not for the Board. Captain Hess said Mr. Crowley is indicating some of the ordinances are unconstitutional and they may be, but they are the ordinances on the books. If Mr. Crowley wants to take it to a circuit court and they are deemed unconstitutional, the Town will have to step back. Captain Hess said he wanted to clarify the issue on the decibel range for the reading. Ofc. Woodward is trained to use the device and would know not to take a reading when there is ambient noise. The property line in a condominium is equally the ceiling of one unit and the adjacent floor of another unit as it is the walls or the sidewalk.

Mr. Ballentine asked what the Town's recommendation was and Captain Hess said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and they be ordered to pay the \$500.00 fine which was on the citation the night of the violation. Mr. Koeppel said a \$500.00 fine was not going to resolve the problem but he would like the Board to require the association and the tenant to get together and come to some conclusion relative to the installation of the material. Mr. Fried asked Mr. Spielberg if the association was going to allow them to install the additional soundproofing and he said they met with the attorneys yesterday and papers are being drawn up. Mr. Spielberg asked that they just lower the volume in the meantime.

Ms. Van Buren told Mr. Crowley for the record she had a lot of issues with his arguments. Mr. Ballentine asked what would happen if another citation is issued. Captain Hess said there would be another fine or the case could be referred back to the Code Enforcement Board for further consideration. Mr. Ballentine asked if the Board could assess a daily fine and Captain Hess said he did not believe so and referred the question to Ms. Ashton who agreed with Captain Hess that the restaurant could not be fined for the days no violation was occurring and the fine had to be per incident. Mr. Ballentine asked if the maximum fine was \$500.00 and she replied in the affirmative.

Mr. Fried said he agreed with Mr. Koepfel that a fine would not solve the problem and he would like to see if the soundproofing worked. He would like to see the matter deferred for 30 days.

Ellen Pettie asked to address the Board and said the basic problem is the building is 85 years old and is primarily wood and steel construction and there are no concrete walls to buffer the noise.

Mr. Renny said the soundproofing would mitigate both the noise and the vibration. He said once the approvals for installation were obtained, they would get the permit process going as quickly as possible. He said he would pay the expedited fees to get it done as soon as possible. Mr. Ballentine asked Mr. Fried if he disagreed with the \$500.00 fine and Mr. Fried said he thought it served no purpose and by deferring the matter, they had the right to have them return next month and give a progress report. Mr. Ballentine said by imposing the fine, the Board would be taking the maximum action it could take.

MOTION BY MR. FRIED TO DEFER THE IMPOSITION OF A FINE UNTIL THE NEXT MEETING IF 251 PARTNERS WILL OBTAIN ALL APPROVALS AND PERMITS NECESSARY AND HAVE THE SOUNDPROOFING INSTALLED AND COME BACK TO THE NEXT MEETING AND GIVE THE BOARD AN UPDATE
SECONDED BY MR. KOEPPEL

Mr. Ballentine said he wanted to go on record that he could support the motion with the exception of the abatement of the fine. He believes the Board should take the Town's recommendation about the fine and still ask them to do what Mr. Fried has in his motion.

MOTION OPPOSED

ROLL CALL VOTE:

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

MOTION FAILED 4-3

MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT

OF \$150.00 AND ORDER THEM TO PAY A FINE IN THE AMOUNT OF \$500.00

**SECONDED BY MS. VAN BUREN
MOTION OPPOSED**

ROLL CALL VOTE:

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

MOTION PASSED 4-3

(The Board took a break before proceeding to Old Business)

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 Walton said this case had been postponed several times and started in January, 2008. The validity of the ordinance was questioned and it went back to Town Council who reaffirmed this was an ordinance they wanted enforced. Mr. Walton said he has had several meetings with Mr. Maxey and they have come to an agreement that brings the property mostly into compliance with the Town's ordinance. The Town recommends the Board order the Nightingale Beach Club Association to trim the hedges per the agreement negotiated between the code enforcement division and Nightingale Trail Association by November 13, 2009 and absent that, to trim in compliance with the Code.

Jack Maxey was sworn in by Recording Secretary Houston and said he believed Mr. Walton needed to define what the agreement was and he would be happy to comply with it. Mr. Maxey said he has tried to protect the Town from what he thought was a bad decision for three years but the Town Council did not see the wisdom of his point of view. Now he is just trying to be self protective and wants it to be in the record that one of the major reasons they came into compliance was the threat of sanction by the Town to fine them on a daily basis. He believes he and Mr. Walton are in complete agreement and they will be happy to comply by

the 17th. He still thinks they are skirting the edge of state DEP laws and he thinks the new regime coming out of the current White House which will be in the law in about 180 days will definitely be skirting it. Mr. Maxey said he gave up, that “you guys won”. In response to Mr. Hoffman’s question, Mr. Maxey said he intended to be in compliance with the agreement between him and Mr. Walton but he still has not seen that in writing.

Mr. Koeppel questioned the compliance date and Mr. Walton said the Town had no objection to it being the 17th instead of the 13th.

**MOTION BY MR. OCHSTEIN TO GIVE THE VIOLATOR UNTIL
NOVEMBER 17, 2009 TO COME INTO COMPLIANCE
SECONDED BY MR. KOEPEL
MOTION PASSED UNANIMOUSLY**

VII. Fine Consideration:

A. Case # 09-2664, 1436 N. Ocean Way, Tony Nader Trust

Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and Florida Building Code 2004, Section 105, building permits are required to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure or to install, alter, repair, move, convert or replace any electrical, mechanical or plumbing system

Lead Code Enforcement Officer Walton said this case was a report on the project and the property has substantial, ongoing work and the Town is not recommending a fine at this time. There is no action required of the Board on this case.

B. Case # 09-2669, 445 Brazilian Ave., # 8, Kimberly Flynn and Rosalind LLC

Violation of Chapter 10, Section 10-9 of the Town of Palm Beach Code of Ordinances, no person shall keep, possess, feed or maintain any live animal within the Town other than domesticated household pets or domesticated animals; under Chapter 10, Section 10-1 of the Code, domesticated household pets means dogs, cats, birds, reptiles, rabbits, guinea pigs, hamsters, fish and turtles

Lead Code Enforcement Officer Walton said the pig has not been removed from the property and he has a statement from the owner of the property, Adam Falkoff that he observed the pig in the apartment as well as a report from an Animal Care & Control officer, J.F. Hepburn, badge # 2116 that he saw the pig. Mr. Walton said he has not seen the pig as he has not been granted access into the apartment but he submits these two witness statements. The Town recommends a daily fine in the amount of \$125.00, commencing on September 22, 2009 and continuing until compliance is achieved. Mr. Hoffman asked if the administrative costs had been paid and Mr. Walton said they had not.

Ms. Van Buren said someone approached her in Publix and made a complaint that the pig was still there. She did not know if it was a neighbor or someone in the building but she tried to distance herself from the conversation. Mr. Koeppel asked if the fine would be assessed against the property owner as well. Mr. Walton said if the Board proceeded with a fine and the fine was not paid, the property could be attached. Mr. Koeppel asked if there was a way to assess the fine but exclude the property owner. Mr. Walton said the normal procedure is to proceed against the property owner to get their cooperation to help resolve the issue. Mr. Walton said he would not suggest the property owner be released from the case at this time because it gives the Town leverage.

Mr. Diamond said this matter was discussed at the last Town Council meeting and the Council president asked him, as Chairman of the Ordinance, Rules and Standards committee, to convene a meeting to straighten out some of these inconsistencies regarding animals as well as some other problems with sections of the Code.

Mr. Peloso asked if there was any indication Ms. Flynn was moving out and Mr. Walton said her car was still there today but the property owner, Rosalind LLC had initiated an eviction proceeding against her.

**MOTION BY MR. FRIED TO ASSESS A DAILY FINE IN THE AMOUNT OF \$125.00 A DAY, COMMENCING ON SEPTEMBER 22, 2009 AND CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

C. Case # 09-2670, 120 Chilean Ave., Doris R. Dickson Est

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 and not provide harborage for vermin, Chapter 42, Section 42-87, exterior walls to be reasonably free of cracks or holes through which weather elements can enter the building or structure and be painted and in good repair and roofs to be maintained so as not to leak, Chapter 18, Section 18-241 and Florida Building Code 2004, Section 105, building permits required to construct, install, repair or alter any building or building system and Chapter 114, Section 114-31 and Section 114-32, business tax receipt required for apartments (minimum 2 units)

Lead Code Enforcement Officer Walton said compliance has not been achieved but Ms. Nissen, the representative for the property would like to explain the situation and ask for additional time.

Dianne Nissen said she has completed a lot of the work and removed two structures. Mr. Walton asked if she could have the work completed by November

17th and she said she could. Mr. Walton said the \$150.00 administrative costs had been paid. Ms. Van Buren said she has observed all of the work going on and would support giving her the additional time.

MOTION BY MR. KOEPEL TO GIVE THE VIOLATOR ADDITIONAL TIME TO COMPLY, UNTIL NOVEMBER 17, 2009
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY

VIII. Fine Reduction:

A. Case # 08-2492, 110 Angler Ave., Stephen J. Macari

REPEAT Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, grass not to exceed 8 inches in height and Chapter 42, Section 42-87, exterior surfaces to be kept painted and in good repair

Lead Code Enforcement Officer Walton said this was an unusual situation. This property, 110 Angler Ave., was found in non-compliance. The outstanding fine is \$27,150.00 which includes the hearing costs. This property was either foreclosed on or given back to the bank. Mr. Macari owned another property, 245 Queens Lane, which was also returned to the bank. Because both houses were in Mr. Macari's name, the lien attached to both properties. Mr. Walton said Eric Baime, who represents Virtual Bank is present to ask the Board to release the lien on the Queens Lane property and just hold it against the Angler Ave. property. The Town does not necessarily disagree with that but would like to get some form of payment for releasing this piece of property. The Town is asking the Board to consider accepting \$10,000 as a partial payment on the lien on the property at 110 Angler Ave. and give Virtual Bank the release they need on the Queens Lane property.

Eric Baime was sworn in by Recording Secretary Houston and said the property the bank owns, 245 Queens Lane, had no violations against it but because of the Town ordinances is encumbered by the lien on Angler. They cannot give marketable title insurance to the buyer of the property at Queens Lane unless they receive a partial release of the lien on Angler. Mr. Baime said this is not an unusual request as other Towns are now granting partial releases, not only because it is equitable, but it helps the properties sell quicker.

Mr. Dowell asked why they would not get the full amount. Mr. Walton said the Board could ask for the entire amount but the Town feels it is equitable for them to pay the \$10,000 as the Queens Lane property was never out of compliance. Ms. Ashton said one of the options is to require the full lien amount to be paid for any release and that is for the Board to decide. Ms. Ashton said the Angler property has been returned to a separate bank and when that bank goes to sell it, the Town's lien is still there. In response to Mr. Ochstein's question, Mr. Baime said Bank of America owns the Angler property. Mr. Ballentine asked how the

\$10,000 figure was arrived at and Mr. Walton said it came about from discussions with Mr. Randolph. It was a negotiated settlement but the Board is not bound by it. Mr. Koeppel said he believed it was inequitable to impose a fine on a property that was not in violation in any way, on the bank that has the loan on the compliant property when the non-compliant property is still there and available to pay the fine.

Mr. Fried asked what the value of the property on Queens Lane was and Mr. Baime said the contract was for 1.8 million. Mr. Baime said the mortgage was about 2 million but the bank wants to sell it. Mr. Walton advised the Board the Town has incurred \$4000 in legal fees. Mr. Peloso asked if the properties were comparable in terms of value and Mr. Walton said the property on Angler would take a lot of money to fix up. Mr. Fried said he agreed with Mr. Koeppel that the wrong person was being penalized but at the same time, the Board had the opportunity to get all of the Town's money. Mr. Fried asked Ms. Ashton where the Town's lien ranked on the Angler property and if there was anything that could impair the Town's right to get their money from it. Ms. Ashton said title agents have always taken into consideration municipal liens and they will not insure title unless the lien is cleared. There is a good likelihood the Town will see its money but she cannot say when that will happen.

Ms. Van Buren asked Mr. Baime if he had the authority to accept a different amount of money such as \$15,000 and he said he did. He said he would prefer the amount go down as opposed to up. Mr. Baime said he understood the Town had a right to have the amount paid in full. Mr. Ochstein said he was not sure the Board had the right to do this as the law spreads the lien to the two houses and he believes the Board has an obligation to collect the money. Mr. Peloso said if the Board said no to this offer, they still would not have the \$27,000. Ms. Ashton said the Town has a foreclosure case proceeding against the Angler Ave. property. The problem is that Mr. Macari gave the property back to the bank so the Town's standing to continue with that foreclosure proceeding is not good. Mr. Hoffman said the Board's job is not to raise money for the Town. It is incidental to what they do and what they have to do in many cases to get compliance. He is in favor of the Town's position on this. Mr. Ochstein asked if no motion would leave the fine the way it was. Mr. Koeppel said that meant Virtual Bank would have to pay the entire amount in order for the bank to close their transaction and he believed that was totally inequitable.

MOTION BY MR. FRIED TO MODIFY THE FINE TO \$15,000 IN
CONSIDERATION FOR A RELEASE OF LIEN ON 245 QUEENS LANE
SECONDED BY MS. VAN BUREN
MOTION OPPOSED

ROLL CALL VOTE:

MR. FRIED

YES

MS. VAN BUREN	YES
MR. KOEPPPEL	NO
MR. OCHSTEIN	NO
MS. GREENBERG	NO
MR. BALLENTINE	NO
MR. HOFFMAN	NO

MOTION FAILED 5-2

**MOTION BY MR. KOEPPPEL TO MODIFY THE FINE TO \$10,000 IN
CONSIDERATION FOR A RELEASE OF LIEN ON 245 QUEENS LANE
SECONDED BY MS. GREENBERG
MOTION OPPOSED**

ROLL CALL VOTE:

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

MOTION PASSED 5-2

IX. Board Comments: (5:06:11 p.m.)

Mr. Hoffman said he thanked everyone. This was a long meeting and the Board had been very diligent and he appreciated the good job they had done. Mr. Hoffman said he wanted to ask the Board if they would object, rather than skipping the December meeting, to meet at 7:00 that night since they were not able to have the meeting during the day (*there is a Town Council meeting scheduled on 12/17/09 in the EOC*). He said he had discussed with the police department today to see if the Town would permit that and he wanted to find out if that would be agreeable to everyone. There was no objection from the Board members.

X. Adjournment: (5:07:31 p.m.)

The meeting was adjourned without benefit of motion.