

Minutes of the Code Enforcement Board
Town of Palm Beach

THURSDAY, AUGUST 20, 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: (2:00:04 p.m.)

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

II. Roll Call: (2:00:31 p.m.)

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

Alternate member W. Anthony Dowell was absent (unexcused).

Staff present: Town Counsel John C. Randolph, Captain John Maio, Captain Fred Hess, Lead Code Enforcement Officer Robert Walton, Code Enforcement Officer Nick Gerry and Recording Secretary Raychel Houston

(Mr. Hoffman welcomed Mr. Peloso to the Board and congratulated Mr. Ballentine on his appointment as a voting member of the Board. He also welcomed Captain Hess who is standing in for Sgt. Krauel and will be presenting the cases and Captain Maio who is replacing Major Szarszewski. Mr. Hoffman also recognized Council Member Diamond who was in the audience.

III. Approval of the Minutes of July 16, 2009: (2:01:51 p.m.)

**MOTION BY MS. GREENBERG FOR APPROVAL OF THE JULY 16, 2009
MINUTES**

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

IV. Administration of the Oath to all persons who wish to testify: (2:02:14 p.m.)

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

V. **Public Hearings:**

A. Case # 09-2642, 445 Brazilian Ave., Rosalind LLC

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and appurtenances such as concrete driveways to be maintained in good condition

Code Enforcement Officer Gerry presented the facts of the case and said half of the driveway was repaired and he had spoken with the property owner who thought repairing half of the driveway would bring him into compliance. Mr. Gerry said he explained to the property owner, who is out of Town and unable to appear before the Board today, that he needed to make additional repairs to the driveway. About half of those additional repairs have been completed but no final inspections have been obtained from the Building Department and Public Works. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give him until September 14, 2009 to come into compliance.

**MOTION BY MR. KOEPPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HIM UNTIL SEPTEMBER 14, 2009 TO COMPLY
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

B. 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

Code Enforcement Officer Gerry presented the facts of the case and said the Town recommends the case be postponed until the September 17, 2009 hearing. The property owner has been trying to come into compliance but needs DOT right of way permits since the signs are located in the easement area and obtaining these permits is taking some time.

**MOTION BY MS. GREENBERG TO POSTPONE THE CASE UNTIL
SEPTEMBER 17, 2009
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

C. [Case # 09-2656, 204 Royal Palm Way, BNB Ventures Palm Beach LLC](#)

Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, all windows and doors of vacant buildings or buildings under construction located within the commercial zoning district whose windows and doors can be viewed from the public street to provide approved screening

Code Enforcement Officer Gerry said the Town recommends this case be dismissed. The business has vertical blinds which technically do not comply with the ordinance but this issue is being reviewed by Staff for more clarification. Mr. Hoffman questioned the dismissal of the case and Mr. Gerry said the property owner would be re-cited if necessary.

MOTION BY MR. KOEPPPEL TO DISMISS THE CASE

SECONDED BY MS. VAN BUREN

MOTION PASSED UNANIMOUSLY

D. [Case # 09-2657, 105 N. County Road, County Road Holdings LLC](#)

Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, all windows and doors of vacant buildings or buildings under construction located within the commercial zoning district whose windows and doors can be viewed from the public street to provide approved screening

Code Enforcement Officer Gerry said the Town recommends this case be dismissed as the property has come into compliance.

MOTION BY MR. FRIED TO DISMISS THE CASE

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

E. [Case # 09-2658, 304 S. County Road, Thomas Campaniello](#)

Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, all windows and doors of vacant buildings or buildings under construction located within the commercial zoning district whose windows and doors can be viewed from the public street to provide approved screening

Code Enforcement Officer Gerry presented the facts of the case and then explained the new window screening ordinance to the Board.

Adela Sanchez was present to represent Thomas Campaniello and said Mr. Campaniello asked her to present copies of e-mails to prove the blinds he ordered were on back order. Ms. Sanchez said Mr. Campaniello is asking for additional time, until September 15, 2009 to have the blinds made and shipped to the stores

to be installed. Ms. Sanchez said Mr. Campaniello is doing all of his properties along So. County Road as well as in Phipps Plaza. Mr. Hoffman asked if these blinds were approved by the Town and Ms. Sanchez said they have been approved and some were already up in some locations. They have not been able to complete everything due to the back order of the material. Mr. Fried asked Ms. Sanchez if she was certain the blinds could be installed by September 15th and she said she was. Mr. Koeppel said it seemed to him that postponement would be appropriate. Mr. Gerry said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give him until September 4, 2009 to comply. Mr. Hoffman asked if the Town would be opposed to moving the date up to the 15th and Mr. Gerry said it would not.

MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND TO GIVE HIM UNTIL SEPTEMBER 15, 2009 TO COMPLY

SECONDED BY MR. KOEPPEL

MOTION PASSED UNANIMOUSLY

F. [Case # 09-2659, 235 S. County Road, Agincourt Realty Trust](#)

Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, all windows and doors of vacant buildings or buildings under construction located within the commercial zoning district whose windows and doors can be viewed from the public street to provide approved screening

Code Enforcement Officer Gerry said the Town recommends this case be dismissed as it has come into compliance.

MOTION BY MS. GREENBERG TO DISMISS THE CASE

SECONDED BY MS. VAN BUREN

MOTION PASSED UNANIMOUSLY

G. [Case # 09-2660, 240A - 242 S. County Road, Thomas Campaniello and Edith B. Eglin](#)

Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, all windows and doors of vacant buildings or buildings under construction located within the commercial zoning district whose windows and doors can be viewed from the public street to provide approved screening

Code Enforcement Officer Gerry presented the facts of the case and said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until September 15, 2009 to come into compliance.

Adela Sanchez, representing Mr. Campaniello, said all of the blinds had not come in for the 242 spot even though it was partially completed and would be taken care of by September 15th.

MOTION BY MR. KOEPPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND TO GIVE THEM UNTIL SEPTEMBER 15, 2009 TO COMPLY.

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

(Mr. Hoffman recognized Council President Pro-Tem Coniglio in the audience)

H. [Case # 09-2661, 326 Peruvian Ave., 326 Peruvian Ave., LLLP](#)

Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, all windows and doors of vacant buildings or buildings under construction located within the commercial zoning district whose windows and doors can be viewed from the public street to provide approved screening

Lead Code Enforcement Officer Walton said the Town recommends this case be dismissed as it has come into compliance.

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

I. [Case # 09-2662, 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

Captain Hess presented the facts of the case and said there are two ways the police department can deal with noise violations in Town. One is by use of a digital sound level meter (commonly called a noise meter) to get decibel readings. The other way is by receiving signed complaints from residents. From early May to mid July, the police department received 7 anonymous complaints regarding noise coming from Club 251. The officers did not find the noise loud enough to rise to the level where they would take enforcement action, although they did ask the club to turn the music down. On July 30th at approximately 11:30 p.m. officers responded to a noise complaint and met with 3 residents of the Palm Beach Hotel who signed sworn affidavits attesting to the fact they were bothered by the noise. Officers took sound level readings from the individual units and those sound level readings ranged from 38 to 46 decibels. The limit at that time of night for that area of Town is 58 decibels so the decibel level itself was not enough to be a violation. However, based on the 3 sworn, signed affidavits, they charged the 251

Club with the violation. Captain Hess asked if there were any witnesses who wished to speak.

Ellen Leeder Pettie from 235 Sunrise Avenue addressed the Board and said she has owned her unit for 25 years. Starting in April, the noise was unbelievable and she could not sleep and had to move out. She now lives with her daughter because she cannot spend the weekends in her unit. Ms. Pettie asked for the Board's help.

Carol Lombard Clark was sworn in by Recording Secretary Houston and said she sold her unit and two days before the sale went through, the purchaser stayed upstairs and listened to the noise and the contract was broken. She called the police and although they came, nothing was done. Her apartment is for sale but she is not going to sell it to someone and not disclose the noise problem so she knows she will not be able to sell it.

Donald Everett was sworn in by Recording Secretary Houston and said he owns the unit right above the club. He rents the unit out but loses all his tenants because they cannot sleep on the weekend. He is a sound pressure engineer and the reason the police cannot read the noise level is because sound pressure levels do not come off basses. Mr. Everett said the condominium association has filed a lawsuit against the club. It will be 6 or 8 months before that case gets to court and season is coming up and they would like to rent their units out. He is asking the Board for their help in trying to solve the problem.

Maura McCune said she represented several owners at the Palm Beach Hotel where she has a real estate office. Prior to the club opening again, she met, as a representative of the board of the condo association with the owners of the new Club 251. The owners and their attorney, who is one of the partners, assured them they were not going to be like the old 251. They said it was going to be a nice restaurant and a lounge with music. Ms. McCune said unit owners are losing money because tenants who were there at the end of the season and subjected to the noise are not returning.

Scott Wortman was present on behalf of 251 Partners. He said they are extremely mindful and sympathetic to the residents. They are working closely with the association and although there is litigation pending, it is being held in abeyance because they have corrected the problems. He does not doubt the complaints took place in March, April, and May and perhaps even in June. They have installed a great deal of sound mitigation elements to the club, spending thousands of dollars. Mr. Wortman said what is before the Board today is not what took place in May but what took place on July 30th. They have a valet service that keeps the flow of traffic moving and a Palm Beach Sheriff's officer every evening to verify there is no rowdiness outside the restaurant. They do not operate beyond the scheduled hours and they are constantly in communication with the association. Over the past four weeks they have not received one complaint. He does not feel it is

proper to penalize them for what happened back in March, April and May and it is not what is before the Board.

Mr. Fried asked Mr. Wortman to clarify his statement that he was running a restaurant and Mr. Wortman said it was a restaurant operation with disco and other types of music being played. Mr. Fried said he had been there and the restaurant is finished about 10:00 and then you walk into another room which is a big discotheque and he believes that is what the people are concerned about. Mr. Wortman said it is one operation as far as he is concerned. Mr. Fried questioned whether food was served in the area where the music is coming from and Mr. Wortman said they did if it was requested. Ms. Greenberg asked Mr. Wortman if he had permission to run these two different establishments and he said again that it was one operation.

Paul Castro, Zoning Administrator, was sworn in by Recording Secretary Houston and said about two years ago, the gap between a nightclub use and a restaurant use closed significantly. The Town changed the regulations to allow restaurants to do entertainment and either background or live music. Prior to 2008, restaurants were not allowed to have dancing or live music. The restaurant operation at 251 can have live music and dancing but is limited to the regulations in Chapter 22 regarding hours of operation next to residential districts. Ms. Van Buren asked Mr. Castro what those hours were and he said he did not know off the top of his head but would check the Code. Mr. Castro said Section 22-271 specifically identifies what an entertainment establishment is and says all entertainment establishments located on property lying adjacent to or within 50 feet of property classified as residential must close at twelve midnight. Mr. Ballentine asked if this establishment was in compliance with closing hours. Mr. Walton said they were not cited for that; this case is about a noise issue. Mr. Walton said the testimony would seem to indicate they are in violation and it would be investigated. Mr. Peloso asked if this was a residential district and Mr. Castro said it was within 50 feet of one, Park Ave. Ms. Van Buren asked if 251 was considered an entertainment establishment and Mr. Castro said it was. Mr. Wortman said they have a strict policy and usher people out the door no later than 2:57 and closing time is 3:00 a.m. Mr. Ballentine said he believed the ordinance indicates they have to close at midnight. Mr. Walton said that was what Mr. Castro stated but that is not the case in front of the Board. Mr. Castro said 251 has a license for a restaurant and as long as they are serving food without the entertainment part of it, they can continue to operate until later hours. It is when the dancing and live music affects the neighbors that it becomes a problem. Mr. Ballentine said he understood that as long as they served food until 3:00, that was okay but it was clear they are doing more than serving food. Mr. Castro said that was correct, that Staff has had issues with fashion shows and serving food off of female bodies and he does not know if that is categorized as entertainment or not. Mr. Castro said they have been keeping a close eye on the activities and what is going on there. Mr. Ochstein asked how this issue was treated at the prior 251. Mr. Castro said 251 was grandfathered as a non-conforming use with a nightclub

license and a restaurant license and the only aspect of the use the Town could control was the hours of operation. When 251 went out of business, they abandoned that nightclub license. Mr. Koeppel said this was an issue but he does not think this issue is before the Board. He does not know if the Board has the power to do anything today with regard to the hours of operation. He said he wanted to know when the noise violation before the Board occurred. Captain Hess said the complaint was received at 11:30 p.m. on July 30th. Mr. Koeppel wanted to know if there was any evidence relating to that date. Captain Hess said there were 3 signed affidavits for that particular night. Captain Hess said Ms. Pettie signed one and had already testified. Alexandra Hanover, a resident of unit 2004 and Dana Morrison, a resident of 2002 also signed affidavits. Mr. Randolph asked what the affidavits said and Captain Hess briefly summarized them, stating the residents said they were being bothered at that time. Mr. Fried asked Mr. Wortman what they had done to rectify the situation and asked Staff if any complaints had been received since July 30th. Captain Hess said the police department has not received any complaints since July 30th. Mr. Wortman said one of his partners, Gus Renny, calls the association president, Mr. Spielberg after each night of operation to verify there have been no complaints that past evening. Sound mitigation pads have been put up against the wall. Extra foam padding has been put over several walls and windows. They are looking at doing additional insulation of the ceiling. The litigation which was filed about a month ago has been put on hold pending the resolution of these issues. He admitted there were problems in the early months of their operation. He knows if they do not correct this, they are going to be out of business. Mr. Hoffman asked if they were using any professional acoustic advice and Mr. Wortman said they had hired two sound engineers. They are also receiving a quote from another engineer to do additional insulation if it appears necessary.

Mr. Castro addressed the Board again and said there is a caveat on the hours of operation. A business can operate outside the hours of operation past midnight if the entertainment is entirely within the building and there is no objectionable noise outside the confines of the building. The entire hotel is one building and that is one of the problems in making them stop entertainment after midnight. Mr. Ochstein said he spoke with Mr. Spielberg yesterday who is still talking about the lawsuit so he does not believe everything is okay. Mr. Ochstein asked if the Town had a recommendation and Captain Hess said it was a finding of non-compliance, a \$150.00 administrative fee and the original \$250.00 fine that was set forth the night of the complaint. Mr. Fried asked Mr. Randolph's opinion as to what a "considerable number of persons" meant under the Code. Mr. Randolph said the language is vague but in the past it has meant 3 or more persons. Mr. Randolph said the Board has the discretion to determine from the number of people in the area if three is a considerable number of persons under the Code. Mr. Fried said he is sympathetic to the people being disturbed but on the other hand, they have to give a business as much slack as they can. Mr. Hoffman said he believed Mr. Wortman has been trying hard to comply and he is sympathetic to both sides also. He does not believe the fine is an excessive amount but he does

not know if it will solve the problem and he does not want the fine to be punitive in nature. Mr. Hoffman asked Mr. Randolph what would happen if the offense occurred again and Mr. Randolph said it would be a second offense and subject to a \$500 penalty. Ms. Van Buren said this was a very time consuming use of the police department's resources to have to respond to these noise complaints.

**MOTION BY MR. KOEPPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND A FINE OF \$250.00
SECONDED BY MR. FRIED**

During discussion on the motion, Mr. Ochstein said he was sorry the Board could not do more than fine because it was a terrible thing being done to a lot of people. Mr. Hoffman asked what would happen if more complaints were received and would it still be only a one time fine. Mr. Randolph said that was correct, under this particular ordinance and due to the ambiguity of "considerable number of people", if this kind of thing continued in the future, it would behoove the Town to get as many affidavits as possible of people who are affected. Mr. Wortman said he hoped the Board was not encouraging residents to gang up on them. If there is credible evidence that they are causing a sound issue and a nuisance issue, that is one thing but just getting affidavits that people are being disturbed, inconsistent with decibel level readings, is not fair to them as a business.

**MOTION BY MR. KOEPPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND A FINE OF \$250.00
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

J. [Case # 09-2663, 251 Sunrise Ave., 251 Partners LLC and Rava LLC](#)

Violation of Chapter 114, Section 114-32 of the Town of Palm Beach Code of Ordinances, business tax receipt required

Lead Code Enforcement Officer Walton presented the facts of the case and said the business is operating a restaurant da Francesco but is licensed as 251 PB. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to order them to quit advertising as da Francesco and only operate as 251 PB.

Mr. Wortman said they recently named the restaurant da Francesco and it was their error in not amending their business tax license. They have since filed an amended business tax license with the Town on August 10th which is pending their name change with the Division of Hotels and Restaurants. Mr. Walton asked Mr. Wortman if they were still advertising as Club 251 PB and told him they could only operate one business at that location. Mr. Randolph asked what date

the Town was giving them for compliance. Mr. Walton said he has given them over a month so far and would give them 2 days at a maximum to comply. Mr. Wortman said they sent their application in on August 10th and the Town is processing it and there is nothing more they can do at this point. Mr. Walton said they could operate as they are licensed, as 251. Ms. Van Buren asked Mr. Walton what date the business was cited and Mr. Walton said the letter was sent on July 21st. Mr. Koepfel said under the circumstances, he felt a 2 day period was inappropriate. He said the business is making an effort to do what has to be done and to make someone change the appearance of their whole operation is not productive. He thought they should be given a reasonable amount of time, until the next meeting. Mr. Ochstein said he thought good faith would have been to get the proper license in the first place. Mr. Ballentine asked if taking down the da Francesco sign would suffice or if they had to change all of their menus. Mr. Walton said if they took the sign down and had applied for the new license, this was moving in the right direction.

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

ROLL CALL VOTE:

MR. KOEPPEL	YES
MR. FRIED	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 GIVE THEM UNTIL AUGUST 22, 2009 TO COMPLY
SECONDED BY MS. GREENBERG
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

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 advised the Board that at the August 12th Town Council meeting, the Council reaffirmed the ocean vista ordinance with some revisions. At the December 2008 Code Enforcement Board hearing, this case was postponed to the Code Enforcement Board hearing immediately following the Town Council meeting that resolved the ocean vista ordinance. Because there are some technical issues and minor changes with the ordinance, the Town recommends this case be postponed to the September 17th hearing date. Ms. Van Buren asked Mr. Walton to reiterate what the Town Council said. Mr. Walton said Town Council reaffirmed that the ocean vista is of value to the Town of Palm Beach and they believe residents and visitors having a view of the ocean is important. Mr. Randolph said the Town Council upheld the ordinance which requires hedges east of Ocean Boulevard to not be in excess of 48 inches and for there to be a 50% ocean vista on new construction where the hedge would not be in excess of 30 inches. However, the main change they made to it is if there is anything in the Town's code that is contrary to state regulations relating to trimming of sea grapes, the state regulations will prevail. If a person is required to apply for a permit to the state and the state does not grant the permit, then the state's determination would prevail. Mr. Fried asked Mr. Randolph if there was any obligation on behalf of the property owner to make application to the state. Mr. Randolph said if someone is cited, the Town's position is they would be required to make application to the state and that is in the new ordinance. Mr. Ochstein asked if the Nightingale Beach Club had done that. Mr. Walton said they had applied and gotten a vegetative trimming permit but that permit had expired and this is why the Town is asking for a further delay.

**MOTION BY MR. FRIED TO POSTPONE THE CASE UNTIL
SEPTEMBER 17, 2009
SECONDED BY MR. KOEPPLE
MOTION PASSED UNANIMOUSLY**

VII. Fine Consideration:

A. [Case # 09-2652, 2283 W. Ibis Isle Road, Lawrences Rule, Jr.](#)

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior walls shall be kept painted and in good repair and interior walls and ceilings shall be structurally sound and Chapter 42, Section 42-86, unsightly, unsafe or unsanitary conditions not permitted and storage of trash and debris on private property prohibited

Lead Code Enforcement Officer Walton said the Town recommends a fine in the amount of \$250.00 a day, commencing on August 18, 2009 and continuing until compliance is achieved.

**MOTION BY MR. FRIED TO ASSESS A FINE IN THE AMOUNT OF
\$250.00 A DAY, COMMENCING ON AUGUST 18, 2009 AND
CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

VIII. Fine Reduction:

A. [Case # 09-2636, 2850 S. Ocean Blvd., #100, Cathy Whitcomb](#)

Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and Florida Building Code, Section 105, building permits required to construct, install, repair or alter any building or building system

Lead Code Enforcement Officer Walton gave a brief history of the case. Peter Mergenthaler was present on behalf of the Whitcombs and asked that the fine be waived. He said every diligent effort had been made on the part of the Whitcombs to resolve this issue and they had been hampered by the management of the association. Mr. Mergenthaler provided details of some of the problems. He also read a narrative into the record from the president of Northlake Construction, William Jennings, who summarized the process it took to get the permit. Ms. Greenberg asked Mr. Walton if this case initially involved work without a permit and Mr. Walton said it was demolition to the interior without a permit. To date the apartment has not been reconstructed but it is in a safe condition now. Ms. Greenberg said when owners do come into compliance, it is after they have been caught and she has no sympathy. Mr. Koeppele said what is before the Board is a fine reduction and it appears from the testimony the contractor did everything in their power to come into compliance. He said it

appears there were delays within the Town itself and according to the testimony, once the permit was issued, the work was completed the next day. Mr. Walton said the testimony that is not in front of the Board is why the permit was delayed. Just applying for a permit without a full set of plans or without the proper paperwork is an incomplete application. Mr. Whitcomb initially sent him a check and a set of plans and asked him to hold them until his contractor picked them up and applied for the permit. He immediately returned the check and plans.

Jeff Taylor, the Town Building Official, said the Town does not normally hold things up and they try to expedite code enforcement issues. Unfortunately, his computer just crashed and he does not have the history of this job. He said he does not recall any extenuating circumstances that held up this permit. Mr. Taylor advised that if they paid an additional fee, they could they get a permit the next day. Mr. Koeppel said he hated to make a decision without the facts and perhaps the case should be postponed. Mr. Taylor said there was also a problem with the ownership of the property and there was probably a two week delay determining who was going to sign the permit as the owner. Mr. Koeppel said that would be outside the control of the owner. Mr. Taylor said the owner at that time was not going to sign the permit application because he did not want to obtain the permit. Mr. Mergenthaler said the owner had gone to great lengths to resolve this issue. Mr. Hoffman said the reason fines are instituted is in order to encourage compliance and in this particular instance, that has been accomplished. He said he would be in favor of a reduction of this fine. Mr. Taylor said once they got the legalities out of the way as to who was able to sign for the permit and the permit was issued, the work did proceed. Ms. Van Buren said she was troubled by the fact that the permit was applied for on June 10th and promised on June 11th and they actually did not get it until June 24th and she believes they did try diligently to resolve the issue and she would be interested in a fine reduction.

**MOTION BY MR. KOEPPEL TO WAIVE THE FINE
SECONDED BY MS. VAN BUREN**

During discussion on the motion, Mr. Ochstein said he was troubled by this because they had been trying to do something on this property since the beginning of April and after all of this, it is still an empty apartment. He said he believes the fine is well deserved and should stand. Mr. Koeppel said the issue at hand is that the fine was imposed based the property owner coming into compliance within a certain period of time.

**MOTION BY MR. KOEPPEL TO WAIVE THE FINE
SECONDED BY MS. VAN BUREN
MOTION OPPOSED**

ROLL CALL VOTE:

MR. KOEPPPEL	YES
MS. VAN BUREN	YES
MR. FRIED	YES
MR. OCHSTEIN	NO
MS. GREENBERG	NO
MR. BALLENTINE	NO
MR. HOFFMAN	YES
 MOTION PASSED	 4-3

IX. **Board Comments: (3:58:54 p.m.)**

Captain Hess said he wanted the Board to be aware, although it did not affect the outcome of the case, that Mr. Wortman testified in the 251 noise complaint case that there was a Palm Beach sheriff there every night. Captain Hess said he did not know whether Mr. Wortman meant a Palm Beach deputy sheriff or a Palm Beach police officer but he can personally tell the Board there has not been a Palm Beach police officer there for at least 2 months and if there is a deputy there, he is operating undercover and not make himself known to the Palm Beach Police Department. Captain Hess said he does not want the Board, as Town residents, to think we have an officer standing there and ignoring some of the things that the people testified about today.

X. **Adjournment: (4:00:50 p.m.) _**

The meeting was adjourned without benefit of motion.