

Minutes of the Code Enforcement Board Town of Palm Beach

THURSDAY, MAY 21, 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:(2:00:31 p.m.)

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

II. Roll Call:(2:00:48 p.m.)

Board members present were Timothy Hoffman, Chairman; Harris S. Fried, Vice Chairman; Members, Joel P. Koeppe, Larry Ochstein, Madelyn Greenberg, Cynthia Van Buren and Alternate Member James M. Ballentine, Jr.

Member Catherine M. Deumler was absent (unexcused).

Staff present was Town Counsel John C. Randolph, Support Services Captain Daniel Szarszewski, Code Enforcement Manager Sgt. Curtis Krauel, Lead Code Enforcement Officer Robert Walton, Code Enforcement Officer Nick Gerry and Recording Secretary Raychel Houston

Mr. Hoffman advised Mr. Ballentine would be a voting member due to Ms. Duemler’s absence. He also mentioned Mayor McDonald’s recognition at the May 12th Town Council meeting of Mr. Randolph’s recent State Bar Association award and the Town’s appreciation of Mr. Randolph’s 30 years of service. Mr. Hoffman said Mr. Randolph’s guidance and advice has enabled the Code Enforcement Board to examine the issues before them in an orderly and enlightened manner and he added the Code Enforcement Board’s thank you for Mr. Randolph’s assistance with the meetings and congratulations on the honor.

III. Approval of the Minutes of April 16, 2009:(2:01:48 p.m.)

MOTION BY MR. KOEPPEL FOR APPROVAL OF THE APRIL 16, 2009 MINUTES

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

IV. Administration of the Oath to all persons who wish to testify:(2:01:59 p.m.)

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

V. **Public Hearings:**

- A. Case # 09-2614, 273 Bahama Lane, James W. Beasley Jr.
Violation of Chapter 134, Section 134-1729 of the Town of Palm Beach Code of Ordinances, a generator is allowed in a side or rear yard provided the generator is set back a minimum of 5 feet from the property line and is screened from the neighboring property owners by a wing wall (three sided wall) at least 4 feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater

Lead Code Enforcement Officer Walton presented the facts of the case and advised a settlement agreement had been reached between the property owner and the Town. The agreement includes a time limit of 60 days to comply and if the terms of the agreement are not adhered to, a fine of \$250.00 a day may be instituted. The only issue not addressed in the agreement is noise and if a noise complaint is received, it will be investigated as a separate issue. The Town recommends the Board accept and ratify the agreement.

**MOTION BY MR. KOEPPEL TO ACCEPT THE SETTLEMENT AGREEMENT BETWEEN THE PROPERTY OWNER AND THE TOWN AND NO FURTHER ACTION BE TAKEN
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

- B. Case # 09-2626, 400 Royal Palm Way, CP 400 Royal Palm Way LLC
Violation of Chapter 38, Section 38-35 (b) of the Town of Palm Beach Code of Ordinances, burglar alarm fines not paid

Sgt. Krauel said the Town recommends the Board accept the payment of the \$3725.00 for the past due burglar alarm fines and the case be dismissed.

**MOTION BY MR. FRIED TO ACCEPT PAYMENT OF THE FINES
AND DISMISS THE CASE
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

- C. [Case # 09-2627, 990 Adam Road, Reuben B. Johnson](#)
[Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior surfaces to be kept painted and in good repair](#)

Code Enforcement Officer Gerry said the case, which was postponed from last month, has come into compliance and the Town recommends the case be dismissed.

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

- D. [Case # 09-2629, 7 Via Parigi, John Surovek Gallery and Everglades Club, Inc.](#)
[Violation of Chapter 114, Section 114-31 and Section 114-32 of the Town of Palm Beach Code of Ordinances, business tax receipt required](#)

Code Enforcement Officer Gerry said this case was postponed from the last meeting and has not come into compliance. Mr. Gerry said, by moving into a separate space, the gallery exceeds the 2000 square feet maximum allowed and will have to get special exemption [sic] from Town Council. Mr. Gerry said the business recently made application to the zoning department for approval and is scheduled to go before the Town Council in August. Mr. Gerry said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to either close the business or obtain a special exemption [sic] and business tax receipt by August 17, 2009. Ms. Van Buren said she remembered the business owner was trying to work out an arrangement with the Everglades Club to remain in the space and asked if they had come to an agreement. Mr. Gerry said he was not aware of that but knew they had submitted an application for special exemption [sic] and would be on the August Town Council agenda. Paul Castro, the Zoning Administrator, was sworn in and said the business owner had not filed an application for a special exception. He said he met with them about a month ago and then did not hear anything for three to four weeks. They met with him on Tuesday and said they were going to proceed with the special exception application but they have not filed at this time. Mr. Koeppel asked if they appeared before Town Council and were granted the special exception, was there anything else they needed to do. Mr. Castro said if they were to file to get on the August Council meeting, they would have to demonstrate they were Town serving and it is also his understanding they did not get a building permit

to open up between the spaces and that is something that will have to be resolved. Peter Broberg, John Surovek's attorney, was sworn in and said he did not realize he was going to have to speak today because he thought this was going to be pushed off to August. Mr. Broberg said he had prepared the special exception application and would be filing it next week.

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 AUGUST 17, 2009 TO COMPLY
SECONDED BY MR. KOEPPPEL
MOTION PASSED UNANIMOUSLY

- E. [Case # 09-2630, 44 Cocoanut Row, # M209, Muller und Sohn Kapital Konsultants LLC and S.M. & Mary E. Mallamo](#)
[Violation of Chapter 114, Section 114-31 and Section 114-32 of the Town of Palm Beach Code of Ordinances, business tax receipt required](#)

Code Enforcement Officer Gerry said this case was postponed from the last meeting and is now in compliance. The Town recommends the case be dismissed.

MOTION BY MR. FRIED TO DISMISS THE CASE
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY

- F. [Case # 09-2632, 202 Worth Ave., Christian Dior and Moda Imports Inc.](#)
[Violation of Chapter 38, Section 38-35 \(b\) of the Town of Palm Beach Code of Ordinances, burglar alarm fines not paid](#)

Sgt. Krauel said this case was postponed from the last meeting and the fines in the amount of \$1402.15 have since been paid. The Town recommends the Board accept payment of the fines and dismiss the case.

MOTION BY MS. GREENBERG TO ACCEPT PAYMENT OF THE FINES AND DISMISS THE CASE
SECONDED BY MR. KOEPPPEL
MOTION PASSED UNANIMOUSLY

- G. [Case # 09-2633, 300 Colonial Lane, Dragana N. Connaughton](#)
[Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not allowed and garage doors to be kept painted and in good condition; Chapter 106, Section 106-159 \(b\), a clearance of 18 feet, measured vertically from the edges of the pavement and extending the full width of all streets and roadways to be maintained at all times](#)

[for the unobstructed passage of vehicles; Chapter 18, Section 18-747, swimming pool gates to self-close and latch and Chapter 18, Section 18-964, street numbers to be displayed so they can easily be read from the street](#)

Code Enforcement Officer Gerry presented the facts of the case and said all of the violations had come into compliance except the gate to the swimming pool which does not self-close and latch as required by the ordinance. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and the swimming pool gate be repaired and all other openings to the pool be secured by June 5, 2009.

Mr. Fried said he was troubled by the gate violation because it was a life safety issue and he would like to see the compliance time shortened. Mr. Ballentine asked if the home was occupied and Mr. Gerry said it appeared to be. Mr. Ballentine said he supported Mr. Fried's recommendation to shorten the time. Mr. Koepfel questioned whether or not a personal visit or a phone call could be made to see if the issue could be corrected prior to the holiday weekend and Mr. Gerry said he did not have a phone number. Mr. Koepfel said he believed the owner worked at Sotheby's Realty and could be contacted there. Ms. Van Buren added that she had seen the homeowner a couple of days ago and believed she was in Palm Beach.

MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HER UNTIL MAY 26, 2009 TO COMPLY
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY

- H. [Case # 09-2634, 156 Peruvian Ave., Yolande Fox](#)
[Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and exterior surfaces to be kept painted and in good repair and Chapter 18, Section 18-242, building permits required to construct, alter, repair, enlarge or demolish any structure or building](#)

Code Enforcement Officer Gerry said the Town recommends the case be postponed to the June 18, 2009 hearing date.

MOTION BY MR. KOEPPEL TO POSTPONE THE CASE UNTIL JUNE 18, 2009
SECONDED BY MR. BALLENTINE
MOTION PASSED UNANIMOUSLY

- I. [Case # 09-2635, 260 Oleander Ave., Casa Fontana Condo Association](#)
[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 off-street parking areas to be kept in good repair and spaces marked in accordance with the approved plan](#)

Code Enforcement Officer Gerry said the Town recommends the case postponed to the June 18, 2009 hearing date.

**MOTION BY MR. FRIED TO POSTPONE THE CASE UNTIL
JUNE 18, 2009
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

- J. [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 presented the facts of the case and said he had been in contact with the property owner's son who told him he has tried to hire a number of contractors. Mr. Whitcomb mailed him an application for a building permit and a check, asking him to hold it until he was able to hire a contractor. Mr. Walton said he promptly returned it. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until June 15, 2009 to comply.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND TO GIVE THEM UNTIL JUNE 15, 2009 TO COMPLY
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

- K. [Case # 09-2637, 288 S. County Road, The Palmway and Thomas Campaniello](#)
[Violation of Chapter 134, Section 134-1111 of the Town of Palm Beach Code of Ordinances, the serving of food and beverages to seat patrons in outdoor open air areas permitted only by special exception and Chapter 114, Section 114-32, business tax receipt required](#)

Lead Code Enforcement Officer Walton presented the facts of the case and said the business cannot obtain a business tax receipt because under Special Exception 1-2009, granted on January 14, 2009, there were conditions that had to be met before the business tax receipt could be issued and Mr. Castro could answer any questions about the special exception. The Town recommends a finding of non-compliance,

administrative costs in the amount of \$150.00 and the business be given until June 15, 2009 to comply.

Mr. Castro explained to the Board that the issue with the business tax receipt is when they received their approval on January 10th, they were required to enter into a declaration of use agreement with the Town that specified some changes in the original 1995 agreement. If they were ever to close again for any period of time, they need Town Council approval because there was an issue of them opening only for a couple of months the first time and then just closing. The second part is if they do close, they have to provide lighting acceptable to the Town in the windows to fill the vacancy. The Town did not receive a draft agreement until 3-4 weeks ago. Mr. Castro said he just gave the agreement to Mr. Randolph and once Mr. Randolph signed off on it, it would go to the Town Manager. Once the Town Manager signs it and it is recorded, Mr. Castro can sign off on the business tax receipt which he has in his office.

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

SECONDED BY MR. KOEPEL

MOTION PASSED UNANIMOUSLY

- L. [Case # 09-2638, 235 Sunrise Ave., # C-19, Palm Beach International Properties LLC and Palm Beach Hotel](#)
[Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe and unsanitary conditions and the storage of discarded materials, trash and debris prohibited and Chapter 42, Section 42-87, walls and doors shall be kept in good repair](#)

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said he has been in contact with a representative of the lender who has taken the property back. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and they be given until June 15, 2009 to comply. Mr. Hoffman asked if it was a landmarked property and Mr. Walton said he did not know. Mr. Castro said the property was landmarked.

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

SECONDED BY MR. FRIED

MOTION PASSED UNANIMOUSLY

- M. [Case # 09-2639, 277 Royal Poinciana Way, RSVP Pack & Ship](#)
[Violation of Chapter 114, Section 114-38 of the Town of Palm Beach Code of Ordinances, storage boxes and shipping outside of store](#)

Lead Code Enforcement Officer Walton said Mr. Kelly, the owner of the business, is out of Town with all of his employees opening a new store. Mr. Kelly wants to present an affirmative defense and has requested the case be postponed to the next hearing date. The Town recommends the case be postponed to June 18, 2009. Mr. Hoffman asked why this was not a repeat violation as he is aware the business has been cited in the past. Mr. Walton said he did not cite the business as a repeat violator.

**MOTION BY MR. KOEPPPEL TO POSTPONE THE CASE UNTIL
JUNE 18, 2009
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

- N. [Case # 09-2640, 226 Kenlyn Road, Jesse T. Casserino Landscape Contractor](#)
[Violation of Chapter 42, Section 42-230 of the Town of Palm Beach Code of Ordinances, leaf blower over 65 dBA](#)

Lead Code Enforcement Officer Walton said the Town recommends the Board accept payment of the fine, which was just paid today and dismiss the case

**MOTION BY MR. FRIED TO ACCEPT PAYMENT OF THE FINE
AND DISMISS THE CASE
SECONDED BY MR. KOEPPPEL
MOTION PASSED UNANIMOUSLY**

- O. [Case # 09-2641, 158 Dunbar Road, Raich Construction](#)
[Violation of Chapter 106, Section 106-42 of the Town of Palm Beach Code of Ordinances, dumpster on right-of-way](#)

Lead Code Enforcement Officer Walton said the Town recommends the Board accept payment of the fine, which was just paid today and dismiss the case.

**MOTION BY MR. KOEPPPEL TO ACCEPT PAYMENT OF THE
FINE AND DISMISS THE CASE
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

VI. Fine Consideration:(2:49:17 p.m.)

- A. Case # 08-2431, 434 Seaspray Ave., Christopher Kaufman
Violation of Chapter 18, Section 18-242, Subsection 1 (104.1.1) of the Town of
Palm Beach Code of Ordinances, building permits required to construct, install,
repair or alter any building or building system

Lead Code Enforcement Officer Walton said the Town recommends the case be dismissed as the property owner obtained the permit and the final inspection as directed by the Board.

Robert Moore was present on behalf of the Kaufmans and advised they wanted to thank the Board for their patience and for the cooperation of the building and police departments. He said the matter has been taken care of and several hundred thousand dollars later, the property is in compliance.

MOTION BY MR. KOEPPLE TO DISMISS THE CASE
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY

VII. Fine Reduction:

- A. Case # 09-2621, 233/235 Royal Poinciana Way, Murgan Family Partnership
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of
Ordinances, unsightly, unsanitary or unsafe conditions not permitted and exterior
walls to be kept painted and appurtenances such as railings and light fixtures to be
maintained in good repair

Lead Code Enforcement Officer Walton said Martin List, the property manager, was present to speak on behalf of the property owner to request a fine reduction. Mr. Walton summarized the case and said the fine was \$1150.00.

Martin List of List Management Company said he was retained as property manager on May 1st and the property owner had asked if he would throw him at the mercy of the Board to see if they would consider reducing the fine.

Mr. Ballentine asked Mr. List what the basis of the appeal was and Mr. List said the notice of violation had not been received by the owner in a timely manner as it was sent to California and there was a delay in him being made aware of the violations. Mr. Ballentine said there are a number of landlords that live out of state and he does not take that as an excuse.

There was a discussion by the Board members about the method of service and the former property manager. Mr. Ochstein suggested the fine be reduced by half. Ms. Greenberg said she disagreed and believes when you buy property, you are responsible for what goes on. Mr. Koeppel said he has a little compassion for people who live out of state and own property here and the owner should not be penalized because of the incompetence of the manager. He agreed with Mr. Ochstein there should be some fine reduction.

**MOTION BY MR. OCHSTEIN TO REDUCE THE FINE BY \$500.00
SECONDED BY MR. KOEPPEL
MOTION OPPOSED**

ROLL CALL VOTE:

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

MOTION FAILED 4-3

VIII. Board Comments:(3:01:49 p.m.)

The Board discussed the new venue for the meetings and everyone agreed it was acceptable. Mr. Fried asked for clarification about missing meetings. He said he was under the impression that if you missed two consecutive meetings you were off the Board. He said at the Ethics seminar he believes Mr. Randolph said it was two meetings during the year. Mr. Randolph said that was correct, if you have two unexcused absences during the year, you are automatically off. He said there are excused absences which are defined in the ordinance. Mr. Hoffman said he believed it was consecutive meetings. Mr. Randolph then read the ordinance and said the Code Enforcement Board follows state statutes specifically and says, in the event any member fails to attend two out of three successive meetings without cause and without prior approval of the Chair, the Code Enforcement Board shall declare the member's office vacant and the Town Council shall promptly fill such vacancy. Mr. Hoffman said it has been the policy that Mr. Elwell has approved or disapproved any absences, that he has never done that and does not believe it has ever been the Chair's duty.

Mr. Fried asked Mr. Randolph what the status of the case involving the air conditioners without screens on the roof at Royal Poinciana and Bradley Place was and Mr. Randolph said it had been briefed by both sides and there has been no ruling by the court. Mr.

Ballentine asked about the status of foreclosure cases and said the Board had recommended foreclosures to the Town Council but did not seem to get any feedback. Mr. Randolph said two or three went to the Council for approval and he believes they were all approved and are moving forward. Mr. Walton said Staff would be happy to report back at the next hearing on these properties. Mr. Hoffman suggested an agenda item called reports.

Council Diamond said there is a problem with live audio at the West Palm Beach location but the audio is available shortly after the meeting and the Board members could listen to the meetings. Ms. Greenberg asked Mr. Diamond if the Town Council would consider bringing the meetings back to the Town and he said he did not know if the EOC was large enough.

IX. Adjournment:(3:08:57 p.m.)

The meeting was adjourned without benefit of motion.