



TOWN OF PALM BEACH POLICE DEPARTMENT

A NATIONAL AND STATE ACCREDITED LAW ENFORCEMENT AGENCY



CODE ENFORCEMENT BOARD MINUTES 2:00 P.M. THURSDAY, MARCH 19, 2009 AT THE TOWN COUNCIL CHAMBERS, 360 S. COUNTY ROAD

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

II. **Roll Call:**

Present:	Timothy Hoffman, Chairman Harris Fried, Vice Chairman Joel P. Koeppe, Member Larry Ochstein, Member Catherine M. Duemler, Member Madelyn Greenberg, Member Cynthia Van Buren, Member James M. Ballentine, Jr., 1 st Alternate William P. Vanneck, 2 nd Alternate
Staff:	Matthew T. Ramenda, Town Counsel Sgt. Curtis Krauel, Code Enforcement Manager Robert Walton, Lead Code Enforcement Officer Nick Gerry, Code Enforcement Officer Raychel Houston, Recording Secretary

(Chairman Hoffman acknowledged the presence of Council Member Bill Diamond in the audience)

III. **Approval of the Minutes of February 19, 2009:**

MOTION BY MS. GREENBERG FOR APPROVAL OF THE FEBRUARY 19, 2009 MINUTES
MOTION SECONDED BY MR. KOEPEL
MOTION PASSED UNANIMOUSLY

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

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

V. Public Hearings:

- A. Case # 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 Robert Walton requested this case be postponed until the April 16, 2009 meeting on the recommendation of the Town Attorney as a negotiated settlement is pending.

MOTION BY MR. OCHSTEIN TO POSTPONE THE CASE TO APRIL 16, 2009

SECONDED BY MR. FRIED

MOTION PASSED UNANIMOUSLY

- B. Case # 09-2616, 400 Royal Palm Way, # 110, Citibank FSB and Whalou Properties II LLC

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 Nick Gerry requested the case be dismissed as it has come into compliance.

MOTION BY MR. FRIED TO DISMISS THE CASE

SECONDED BY MS. GREENBERG

MOTION PASSED UNANIMOUSLY

- C. Case # 09-2617, 168 Reef Road, Paul Pomfret

Violation of Chapter 134, Section 134-1728 of the Town of Palm Beach Code of Ordinances, swimming pool equipment not allowed to be located closer than 5 feet from the rear or side property line and any swimming pool equipment within the required 10 feet from the side or rear property line shall be completely screened from the neighboring property with a wall as high as the equipment; Chapter 134, Section 134-1729, swimming pool pumps and filters allowed in the side or rear yard provided such equipment is placed no closer than 5 feet from the side or rear property line and is enclosed in a pump house not exceeding a height of 4 feet and Chapter 18, Section 18-241 and adopted 2004 Florida Building Code, Section 105, building permits required to install, alter or repair any electrical, gas, mechanical or

plumbing system

Code Enforcement Officer Nick Gerry presented the facts of the case and said it was the result of a resident's complaint. Mr. Gerry said an inspection was done and he found a water heater and pool equipment located in the set back areas of the property. Mr. Gerry said he spoke with Mr. Pomfret, the property owner, and discussed the violation. Mr. Pomfret needs to obtain a building permit and relocate the equipment outside the set back areas. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give him until April 13, 2009 to comply.

Mr. Pomfret was present and said he has a general contracting, an electrical and a plumbing permit. He said the problem is the pool equipment has to be moved 250 feet from where it is. The pool equipment is where it was when he purchased the home ten years ago. He understands it is not in compliance but this is definitely a hardship as it is going to cost him \$40,000 to \$50,000 in this economy. The job is in process and he hopes to have everything done by next week. He would like to have an extension of time until the next meeting to get everything done.

Mr. Koeppel asked if this could be a grandfathering issue due to the time the pool equipment has been there. Mr. Ramenda said he spoke to Mr. Walton about the case yesterday and he does not know how long it has been there but the issue is to get the property into compliance. Mr. Ramenda asked Mr. Pomfret how old the property was and Mr. Pomfret said the house was built in 1944 but the pool was put in somewhere in the 60's. Mr. Pomfret said the real problem was where to move it under the new rules. It has become a major expense and it is disappointing that people can use code enforcement as their own pit bull. Mr. Gerry said the Town had not found any permit for the equipment and there was a survey from 1998 showing the equipment was located on the other side of the wall. The equipment was installed without any permits. Since there is no record of any permits, grandfathering does not apply. Ms. Duemler asked how many more of these situations existed. Mr. Gerry said these violations are not actively pursued. They are investigated if complaints are received or the code enforcement officer discovers the violation. Ms. Van Buren asked Mr. Pomfret if he was agreeable to the time frame the Town is recommending and he said he was.

**MOTION BY MR. KOEPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HIM UNTIL APRIL 13, 2009 TO COMPLY
SECONDED BY MS. DUEMLER
MOTION PASSED UNANIMOUSLY**

- D. Case # 09-2618, 211 Worth Avenue, A.B. Levy Palm Beach and Lendan Inc.
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

install, enlarge, construct, repair or alter any building or structure; Chapter 134, Section 134-1156, joint businesses cannot share space which exceeds the maximum gross leasable area allowed and Chapter 134, Section 134-1157 (b), no existing commercial use which is subject to the 2000 square foot maximum gross leasable area (GLA) regulation may occupy additional space within 1500 feet of the existing licensed business, which distance shall be measured along the public sidewalk, if such new space to be occupied will increase the total gross leasable area (GLA) to more than 2000 square feet without a special exception approval by the Town Council

Code Enforcement Officer Nick Gerry presented the facts of the case and said he was in the store doing a business tax receipt inspection and saw a door installed between A.B. Levy and Spencer Gallery. Both businesses have the same owner. Mr. Gerry said he noted the door was not UL rated as he is also a fire inspector. Mr. Gerry said the business was told they either needed to obtain a permit for the door or remove it and seal up the opening. Mr. Gerry said he had a request to postpone this case due to the fact Mr. Levy is ill and has been hospitalized.

Frederick Krueger, senior director of A.B. Levy Gallery, was present on behalf of the owner and said Mr. Levy is requesting the case be postponed until next month. Mr. Krueger said Mr. Levy wants to prove his business is Town serving. Mr. Fried asked if the fact that the door is not fire rated raises any significant issues of life safety. Mr. Gerry said a fire in one suite could easily spread to the other suite if they continue to leave the door open. Mr. Gerry said he received a letter from Mr. Levy advising they are going to keep the door closed. Even though the door does not meet the Code, it would contain a fire for a short period of time so there is no immediate life safety threat. Mr. Fried told Mr. Krueger he does not see the connection between the issues raised by the code enforcement officer and the fact Mr. Levy is going to present the argument his business is Town serving. Mr. Fried said he did not have a problem giving Mr. Levy more time to comply. Mr. Krueger said he thought there was an issue of square footage. Mr. Gerry said this is one of the issues if Mr. Levy wants to keep the space between the businesses open. However, in talking to the Building Official, the door will have to be self closing and the main concern right now is the door. Mr. Hoffman said it is not up to the Code Enforcement Board to determine if the business is Town serving. Mr. Koeppel asked if the two stores together were more than 2000 square feet and Mr. Gerry said A.B. Levy is a two story commercial retail store and just one of the spaces is roughly 3000 square feet. Mr. Koeppel asked if they are able to satisfy the Town serving requirements, would that eliminate the notice relative to the other issues. Mr. Gerry said it would not because there are two separate issues, the door being installed without a permit and the zoning issue as to whether they can allow access between the two stores. If A.B. Levy meets the town serving criteria for the square footage and can get zoning approval, he will be okay on that portion of it but the door still remains in violation. Mr. Koeppel said he wanted to make certain Mr. Krueger was aware there are two issues, not just the Town serving one.

The Town recommends a finding of non-compliance, administrative costs in the

amount of \$150.00 and to give them until April 13, 2009 to come into compliance. Mr. Fried asked if it was possible to separate the issues and just get the issue with the door resolved today. Mr. Hoffman said the issue of whether the business is Town serving is not in the Board's jurisdiction. Mr. Gerry advised the zoning administrator will have to approve that and the business has to show documentation. Mr. Gerry said he had reviewed the case with the zoning administrator and Town staff and they have indicated the business will not get Town serving unless they come up with some other measures. This is why they were cited in the first place. Mr. Hoffman asked if it would have to go in front of Town Council and Mr. Gerry said it would.

Jeff Taylor, Building Official, said the problem is if the door is not compliant, it breeches the fire rating between the two units. If the door is not compliant, a permit cannot be issued without the zoning being settled. Mr. Hoffman asked if April 13, 2009 would be enough time to get the item on the Town Council agenda and Mr. Walton said it would not. Mr. Walton said Mr. Levy could come back at the April meeting and ask for more time. Mr. Koepfel said he would like to amend his motion to include that Mr. Levy get a permit for the door before the next hearing which would resolve one of the issues. Everything else could be brought to Council. Mr. Hoffman said he understood Mr. Levy could not get a permit for the door without being Town serving. Mr. Taylor said if Mr. Levy got a permit for the door, it would have to be fire rated, self closing and have the proper equipment but they want a door they can leave open. The Town could issue a permit for a fire rated door, locking from both sides as if it were a door between two separate units even though they do not have a Town serving permit. If they are designated as Town serving, they could leave the door open or even have an opening between the stores because then it would become one tenant. Mr. Fried said the fire rated doors are very expensive and it may turn out they do not need a fire rated door if they are designated town serving.

**MOTION BY MR. KOEPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL APRIL 13, 2009 TO COMPLY
SECONDED BY MS. DUEMLER
MOTION PASSED UNANIMOUSLY**

- E. Case # 09-2619, 150 S. Ocean Blvd., Botanica Landscaping, LLC
Violation of Chapter 66, Section 66-83 of the Town of Palm Beach Code of Ordinances, removing beach sand

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said he discovered the violation on March 6, 2009. There were 3 laborers with a wheelbarrow removing sand from the beach. Mr. Walton said he met with a supervisor, Amy Ehn, from Botanica Landscaping who signed the Notice to Appear. This violation is not on the fine schedule which requires an appearance before the Board. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and a \$250.00 fine.

Patrick Beltan from Botanica Landscaping was present and said they had a request from the owner of a property right across the street from the beach who had children coming to visit. He had a sand box and wanted a wheelbarrow full of beach sand. This occurred late on a Friday and the beach sand was going to be put back on the beach on Monday morning as it was a temporary sand box for the weekend.

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

Mr. Walton said he wanted to add that the sand was put back after the weekend but it was a clear violation and they had created a mess on the beach.

F. Case # 09-2620, 314 Dunbar Road, Marilyn Sultan

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior walls shall be reasonably free of cracks or holes through which weather elements can enter the building and all exterior surfacing material shall be kept painted and in good repair and roofs to be maintained so as not to leak and doors kept in sound condition

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said the complaint was made by a resident. The property has been before the Board in the past. The previous cases involved the dock and the sea wall and those cases have come into compliance. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until April 13, 2009 to correct the violations.

**MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL APRIL 13, 2009 TO COME INTO COMPLIANCE
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

G. 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 Robert Walton presented the facts of the case and said it was the result of a citizen complaint. This is a multi-family building with apartments on the second floor and vacant commercial space on the ground floor.

The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until April 13, 2009 to come into compliance. Ms. Greenberg asked if anyone was living upstairs and Mr. Walton said he believed it was completely rented. Mr. Walton said he believes the property owner is in California although there may be an off-site property manager somewhere in Boynton Beach who has not been responding to resident complaints. Mr. Fried asked if service was obtained and Mr. Walton said the property had to be posted. Mr. Walton said he had met with the property owner about 9 months to a year ago in regard to the vacant store front and the property was in disrepair at that time. The property owner did paint the building then.

**MOTION BY MR. KOEPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL APRIL 13, 2009 TO COMPLY
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

Mr. Fried asked if this case fell in the category of being a repeat offense. Mr. Walton said he did not cite the property owner as a repeat offender although he possibly could have.

- H. Case # 09-2622, 249 Brazilian Ave., Frank Frankel
Violation of Chapter 54, Section 54-71(a) of the Town of Palm Beach Code of Ordinances, no landmark or any building on a landmark site or within a historic district shall be altered until an application for a certificate of appropriateness has been submitted and approved by the Architectural Commission

Mr. Walton presented the facts of the case and said it was referred to Code Enforcement by the Building Department. Mr. Walton said he was turning the presentation of the case over to Jane Day, the Town's consultant with regard to historic and landmarked buildings.

Jane Day said she has been the landmarks consultant to the Town of Palm Beach since 1992. This house on Brazilian Ave. was landmarked by the Landmark Commission and ratified by the Town Council in 1995. She presented photographs that were taken when the landmarking was accomplished. She then presented photographs of what the building looks like today. There has been applied ornamentation to the building without landmark approval. She had complaints from Landmark commissioners last summer that work was being done on the building without approval. She presented a picture of the north side of the property and said there is a lion fountain where a door had once been. She said a barrel cap was added to the parapet and some ornamentation applied above and between the windows. They applied two lion roundels on the south side of the house and have accentuated the parapet on the top. All of these things may be approved by the Landmark Commission but that is unknown because the property owner did not follow the proper process under Chapter 54 of the ordinance. Ms. Day said she first spoke to

Mr. Frankel's representative in September of last year. Tim Frank, the Town Planner, was still here then and one of his tasks was to do administrative staff approvals if things came forward on landmarked or ARCOM properties that were minor enough that he did not think they had to go to the Commission. Mr. Frank informed Mr. Frankel's representative that these were too great a change to the property and he needed to go to Landmarks. She filled in for Mr. Frank for 2 months until John Lingren was hired and another architect who worked for Mr. Frankel came to her and asked her if she could staff approve the changes. She told him she could not, that the project needed to go to the Landmark Commission. She spoke with Mr. Frankel in November and asked him if he could get on the December Landmarks agenda. That did not happen and he currently does not have an application for the Landmark Commission.

Frank Frankel presented some photographs to the Board. He said he spoke to Tim Frank when he first bought the house and asked Mr. Frank about the front door. Mr. Frankel said Mr. Frank told him as long as he did not put in a jalousie window door he would be fine. He said he told Mr. Frank he was going with glass and iron or maybe "pecky". He said he believed he spoke with Ms. Day once. The architect he hired never got back to him about the December meeting. This is not a Mizner house and he has not done anything unfitting or out of character. Mr. Frankel said he has been renovating the house for three years and never heard of Landmarks and no one ever sent him a letter telling him about this protocol. The realtor never told him what he would have to endure if he bought the house. He would like to suggest a criteria sheet be given out on any landmark house that is under contract to tell them what they are going to have to go through to restore it. This was all news to him until December. Mr. Hoffman asked Mr. Frankel if he had permits for the work he had done and he said he had permits on everything.

Jeff Taylor said there was permitted work on the property but the scope did not include the finistrations and the added ornaments. There was no permit for the change of the doors. Mr. Frankel said he did have a permit and Mr. Taylor reiterated there was no permit for the front door. Mr. Frankel said that was news to him and he would have to talk to his contractor. Ms. Duemler asked Mr. Frankel when he bought the house and he said three years ago. She asked him if there was a plaque on the house that said it was landmarked and he said there was. Ms. Duemler asked him if he saw this plaque, would he not question what he could do to the house if it was landmarked or who he should talk to. Ms. Duemler told Mr. Frankel that when something is landmarked, it is an indication you need to speak to the people who handle landmark issues and who trace and track history. Mr. Frankel said he was under the impression that if he cleared it with Mr. Frank, it was okay. Ms. Van Buren asked Ms. Day if she had spoken with Mr. Frankel in November and requested he go before Landmarks and she said she did. Ms. Van Buren asked Mr. Frankel if he recalled that conversation and he said did and he had his architect come to his house, take all of the information and the plans. Ms. Van Buren asked why he did not follow through with the process and he said his architect was supposed to handle all those meetings. He kept asking the architect if he was ready and he kept delaying and then he never heard back from him. Mr. Frankel said he was going to have to

start over with another architect and another presentation. Ms. Day said there are 254 landmarks in the Town of Palm Beach and with each one of those, a covenant is filed with the deed so if a property changes hands, the attorneys and the realtors involved would find it in the title search. Mr. Frankel said that was not the case on his property. He said his lawyer looked over all the papers and there was nothing in there about landmarks or anything.

Mr. Walton said although there was some discussion of permits, that issue is not in front of the Board. The only thing before the Board is the violation of not getting Landmark Commission approval. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and Mr. Frankel be given until April 13, 2009 to apply to be heard at the May 20, 2009 Landmark Commission hearing and he must comply with Landmark Commission requirements by June 15, 2009. Mr. Walton said if the April 13, 2009 application deadline is not complied with, this case will be heard at the April 16, 2009 Board hearing for fine consideration. If Mr. Frankel does not comply with Landmark Commission requirements by June 15, 2009, this case will be heard at the June 18, 2009 Board hearing for a fine consideration.

**MOTION BY MS. DUEMLER TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HIM UNTIL APRIL 13, 2009 TO APPLY TO BE HEARD AT THE MAY 20, 2009 LANDMARK COMMISSION MEETING AND TO GIVE HIM UNTIL JUNE 15, 2009 TO COMPLY WITH THE REQUIREMENTS OF THE LANDMARK COMMISSION
SECONDED BY MR. OCHSTEIN**

During discussion on the motion, Mr. Fried questioned whether this was the right direction to take, that perhaps a straight forward motion to find Mr. Frankel in non-compliance and to give him until the next meeting to see how they performed would be more appropriate. The Board would then be in the position to start fining them. Mr. Fried said he believes it is quite clear the property owner knows what he needs to do now. Mr. Walton said the property owner needs to apply to be heard at the May 20th Landmark hearing. Mr. Walton said the reason he is being given until April 13th is because April 15th is the deadline to be heard at the May meeting. If Mr. Frankel is found in non-compliance and told he needs to come into compliance by the next meeting, he cannot do that. Mr. Fried asked if it would just simply things to give him two months to come into compliance. Mr. Walton said that would also work but he believes his method is best.

**MOTION BY MS. DUEMLER TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HIM UNTIL APRIL 13, 2009 TO APPLY TO BE HEARD AT THE MAY 20, 2009 LANDMARK COMMISSION MEETING AND TO GIVE HIM UNTIL JUNE 15, 2009 TO COMPLY WITH THE REQUIREMENTS OF THE LANDMARK COMMISSION
SECONDED BY MR. OCHSTEIN**

MOTION OPPOSED

ROLL CALL VOTE:

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

MOTION PASSED **6-1**

Mr. Walton said he would like to thank Ms. Day for her assistance with this case.

I. Case # 09-2623, 209 Clarke Ave., DLU LLC

Violation of Chapter 134, Section 134-1637 of the Town of Palm Beach Code of Ordinances, no obstruction to vision, other than an existing structure, exceeding 30 inches in height above the established grade of the crown of the public street or road at its highest elevation shall be erected or maintained in order to promote more adequate protection for the safety of children, pedestrians and operators of motor vehicles

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said it was initiated by a citizen complaint. Mr. Walton said he found an existing wall, which is key to this case, in the vision triangle as well as some trees. The ordinance, Chapter 134, Section 1637 requires property owners to maintain a vision triangle 15 feet along the side street, 30 feet along the through street and nothing in the vision triangle can exceed 30 inches in height other than an existing structure. The property has not been brought into compliance. Mr. Walton said there is a wall behind the one in question that is in compliance with the ordinance. The wall along Clarke Ave. is 45 inches tall and the wall along County Road is 38 inches tall. The ordinance calls for the wall to be measured from the crown of the road. Mr. Walton said his measurements are taken from the dirt at the base of the wall which is relatively in line with the crown of the road but the crown of the road was not shot. These are not absolute measurements. There was a house on the property that was torn down and this house was built approximately 7 years ago. The wall in question was an existing wall which was left when the old house was torn down. This new house has to be brought into compliance with the current codes since it is a new structure. Mr. Walton said he went back and checked the ARCOM records to see if he could find any notation about leaving the old wall. He checked the building plans as well and could find not find the wall depicted on any of the drawings and that is why this case is being brought to the Board.

David Ulrich, the property owner, was present and said he appreciated the privilege of addressing the Board. Mr. Ulrich asked Mr. Walton if he really knew if the wall was in compliance or not with respect to the 30 inches above the crown of the road. Mr. Walton said he did not shoot it but in his estimation it was out of compliance because the crown of the road is lower than or equal to the dirt. Mr. Ulrich said he was not sure that was correct but he did not want to argue. He said County has a very high crown but the real point is that the wall has been there for 80 years and when the house was built, the Town issued a certificate of occupancy. Mr. Ulrich said he purchased the house about 5 years ago. He said he just received notification of this as the letter was sent on March 5th, less than 2 weeks ago. He asked Mr. Walton if he mailed anything before that date and Mr. Walton said he did not. Mr. Ulrich said he believed there were many properties throughout the Town in his position. He said he did not believe a fine was appropriate as he had less than 2 weeks to respond to this. It is going to create quite a bit of work. He is asking for a little leeway because of the short notice and the fact the Town really does not know the height of the crown of the road. If Staff wants him to have it surveyed, he would be happy to do that. There is no real visible proof he is not in compliance. Even if he is not in compliance, this might be considered a grandfathering clause since the wall has been there for 80 years and the Town gave the builder a certificate of occupancy on it 5 years ago.

Mr. Walton asked Mr. Ulrich if he would be opposed to lowering the wall to 30 inches and removing the trees. Mr. Ulrich asked if the trees were a hazard and Mr. Walton said they were not in compliance with the code. Mr. Ulrich said that would be fine if that is what the Code requires. Mr. Ulrich said there were huge trees there previously that were destroyed by the hurricane and all he did was replace what was there for aesthetic reasons. Mr. Ulrich asked if the Town wants the wall cut down to 30 inches and Mr. Walton said if the top of the wall is 30 inches above the crown of the road, it would be in compliance. Mr. Walton said this is not your typical 90 degree intersection as the wall is on an angle. Mr. Ulrich said he did not know what was equitable since the wall has been existing. He again suggested this may be grandfathered.

Mr. Fried said he was sympathetic with the property owner but this particular code provision applies to safety. He said he hoped Mr. Ulrich would be inclined to bring the property into compliance with what the Town requires. Mr. Ulrich said he would be happy to do that, that if the wall needed to be 30 inches, he would make it 30 inches and deal with the trees as well. Mr. Hoffman asked if the foliage of the trees was high enough so it would not create a problem. Mr. Walton said the issue is the fact no vegetation in the vision triangle can be higher than 30 inches. Mr. Ulrich said he is a real estate developer in a town in upstate New York that is the same size as Palm Beach and he finds it is easier to get along with everyone than to argue. He does not want to create a nuisance but he is in kind of a catch 22. He bought a house and the wall was there. He would be happy to take the wall down to 30 inches and remove the landscaping at Mr. Walton's direction to make it acceptable. He asked for enough time to do this.

Mr. Ochstein asked about the approval. Mr. Walton said the building department reviews plans and the Code, as stated today, must be met. Code and building inspectors are human and possibly a mistake was made. The inspector who passed the house is no longer with the Town. The Building Department reviews plans; it does not approve them and they must meet the Code. Mr. Ulrich said the fine was not a lot of money but he was getting fined for something he had not been given an opportunity to address. Ms. Van Buren said she appreciated Mr. Ulrich's attitude of cooperation and she thought they could get the situation resolved equitably. Ms. Van Buren said the issue involves inches and since Mr. Walton said his measurements were not exact, an exact measurement would be needed. Mr. Walton said Mr. Ulrich said he would get a survey done. Ms. Van Buren said she would be in favor of giving Mr. Ulrich the extra time he is requesting to take care of the matter.

Mr. Koeppel advised Mr. Ulrich there had not been any fine imposed and the only issue was the costs which are fairly normal when these cases are brought before the Board. He would encourage a survey be done to determine if the wall is or is not in compliance. Mr. Koeppel said his personal opinion is that the wall is grandfathered in but he understands the safety concerns. Even though they may not technically be in compliance, if the trees are not creating any type of obstacle, he thinks there should be a tradeoff so the trees would not have to be moved.

Mr. Walton said he would concur with that if Public Works and Zoning agreed. Mr. Fried said he was concerned about setting precedence and he is inclined to believe the Board should go by the book. A survey should be done to see how much the wall needs to be taken down to bring it into compliance. He is also concerned about leaving trees that may not be blocking anyone's vision at the moment but may exist until they do and then the case would come back before the Board.

Mr. Walton said he is going to change his recommendation because he believes he is going to get compliance in this case. Mr. Walton said the Town recommends the case be postponed until the April 16th Board hearing and hopefully, it will be resolved by then. Mr. Hoffman asked if a permit for demolition of the wall would be needed and Mr. Walton said that would be determined by the Building Official. Mr. Koeppel said the type of trees on the property are not the type to be obstructive; they are palm trees that are quite tall and he does not believe they are ever going to pose a problem relative to safety. Mr. Walton said he would confer with the Zoning and the Public Works departments to make sure everybody is in agreement on what can and cannot stay. Mr. Ochstein said he still has a problem with this case because the property owner is in non-compliance and is before the Board now and the costs are still the costs. Mr. Walton said the object is to bring citizens into compliance and this property owner is saying he is going to come into compliance.

MOTION BY MR. FRIED TO POSTPONE THIS CASE UNTIL APRIL 16, 2009

SECONDED BY MS. DUEMLER

MOTION PASSED UNANIMOUSLY

- J. Case # 09-2624, 1695 N. Ocean Way, Brown Gordon Trust
Violation of Chapter 18, Section 18-242 of the Town of Palm Beach Code of Ordinances and 2004 Florida Building Code, Section 106.3.5.3, any site in which reconstruction does not commence within 15 days after demolition must be irrigated and sodded and the property maintained so as not to be in an unsightly condition

Code Enforcement Officer Nick Gerry presented the facts of the case and said a complaint was received about this vacant lot. A demolition permit was issued to Davis General Contractor to demolish the single family home with a pool on June 23, 2008. It was finalized August 28, 2008. The condition of the demolition permit is that if reconstruction does not commence within 15 days, the lot must be irrigated and sodded or seeded. A letter dated March 12th was just received from the property owner, advising he intends to install a temporary chain link fence with a screened barrier so the property cannot be seen from the street. He said he is going to start bidding the house out for construction in April in lieu of sodding it. The property owner does not want to install grass, just a temporary chain link fence. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give him until April 3, 2009 to comply by installing sod grass and irrigation to the vacant lot. Mr. Koeppel asked if there was a provision in the Code for putting up a fence with screening to comply with the ordinance. Mr. Gerry said the code is pretty stringent and there is no provision for an alternate to irrigation and sod. This should have been done 15 days after the house was demolished but at that time, the owner said he was going to start construction.

MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE HIM UNTIL APRIL 3, 2009 TO COMPLY
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY

- K. Case # 09-2625, 265 W. Indies Drive, J. Reed Stewart
Violation of Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances, the maximum permissible emission of noise level established by the use of a sound level meter is set at a maximum of 61 dBA for day and 55 dBA for night (between 7:00 p.m. and 9:00 a.m.) for this geographic area

Lead Code Enforcement Officer Robert Walton requested this case be dismissed for compliance.

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

VI. Fine Consideration:

- A. Case # 09-2602, 232 Worth Avenue, Kaufman DeSuisse LLC and Palm V Assoc Ltd
Violation of Chapter 134, Section 134-1157 (b) of the Town of Palm Beach Code of Ordinances, no existing commercial use which is subject to the 2000 square feet maximum gross leasable area (GLA) regulation may occupy additional space within 1500 feet of the existing licensed business, which distance shall be measured along the public sidewalk, if such new space to be occupied will increase the total gross leasable area (GLA) to more than 2000 square feet and Chapter 134, Section 134-2372, permit required for the erection or installation of any sign within the Town

Lead Code Enforcement Officer Robert Walton said this property is now in compliance so no further action is required. Mr. Walton said there was no need for a motion by the Board.

- B. Case # 09-2608, 250 Royal Palm Way, NHM Realty LLC
Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and adopted Florida Building Code, Section 105, building permits required to install, enlarge, alter or repair any building or structure

Lead Code Enforcement Officer Robert Walton said the property owner was found in non-compliance at the February 19, 2009 hearing and they were given until March 16, 2009 to achieve compliance. No permits have been obtained and they have made no effort to obtain a permit. The Town requests a fine of \$150.00 a day commence on March 17, 2009 and continue until compliance is achieved.

**MOTION BY MR. FRIED TO ASSESS A FINE IN THE AMOUNT OF \$150.00
A DAY, COMMENCING ON MARCH 17, 2009 AND CONTINUING UNTIL
COMPLIANCE IS ACHIEVED
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

VII. 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 eight (8") inches in height and Chapter 42, Section 42-87, exterior surfaces to be kept painted and in good repair

Lead Code Enforcement Officer Robert Walton said the property owner has

withdrawn his request for a fine reduction. The case is on the agenda because it was postponed from a previous hearing. There is no further action required by the Board and no motion is necessary.

- B. Case # 09-2611, 389 S. Lake Drive, Florida Choice Contracting Inc.
Violation of Chapter 42, Section 42-199 of the Town of Palm Beach Code of Ordinances, construction work outside the proper day/time

Lead Code Enforcement Officer Robert Walton said an employee of the company was served an NTA by Code Enforcement Officer Bryant Weymer and the company is contesting the fine, advising they were not aware of the violation or the hearing date. No one from the company is present so there is no further action required by the Board. Mr. Koeppel asked if the company could request to be on the next agenda after not appearing today. Mr. Walton said it would have to be with a very, very good reason.

VIII. Foreclosure Hearing:

- A. Case # 08-2551, 112 Caribbean Road, James M. Brandon
Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, landscape to be kept in good condition and grass height not to exceed 8 inches, Chapter 42, Section 42-87 (7), appurtenances such as swimming pools to be kept in a good state of repair and Chapter 42, Section 42-87 (2), exterior surfaces to be kept in good repair.

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said the Town is recommending the Board move forward with a foreclosure action against the property. The property is out of compliance except for the violations which were corrected by the Town pursuant to a Notice to Abate. The fines due to date are \$53,150.00 and the lien has been filed for the required 90 days. The property remains out of compliance and the Town requests the Board recommend foreclosure action to the Town Council. Mr. Hoffman asked if it would appear on the next Council agenda. There was some discussion on the foreclosure process initiated by Mr. Ballentine. Mr. Ballentine asked if this house was abandoned and Mr. Walton said it apparently has been. The certified mail is getting picked up and being signed for and from time to time cars are seen on the property. Ms. Van Buren said it is her understanding the property owners have left the country and asked about service. Mr. Walton said in addition to getting the certified mail signatures, the property has also been posted so there is legal service. Mr. Fried asked if the fine would run until the sale of the property and Mr. Walton said it ran until the property was in compliance, either through demolition or repair. Mr. Fried asked if the fine would continue for the new owner if the property was sold and the Town got paid. Mr. Walton said the violation goes with the property. Mr. Koeppel said there are other properties with significantly higher amounts due and with older dates. Mr.

Walton said he would be happy to discuss those but he would like to dispense with the matter before the Board prior to that.

**MOTION BY MR. FRIED TO RECOMMEND FORECLOSURE ON THIS
PROPERTY TO TOWN COUNCIL
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

VIII. Board Comments:

Ms. Greenberg said she had questions about two properties and Mr. Walton told her they could talk in generalities but specific properties could not be discussed. She mentioned there were two properties that had higher fines due but were homesteaded. Mr. Walton advised that a homesteaded property could not be foreclosed on. Ms. Greenberg asked if the Town could do anything on properties that were health hazards. Mr. Walton said the case could be referred to the Town Manager as a nuisance which was done on the previous case and also a property on Park Avenue. The violation is taken care of and a lien is placed on the property.

Mr. Ballentine said he did not comment on the 168 Reef Road, Paul Pomfret case at the time it was before the Board but there are certain aspects of it that bother him. He wants to see if he properly understands it. There was a complaint from a neighbor which he assumed was about noise. He understands the property owner is being cited because he did not have a building permit. Mr. Walton said the case had already been heard and should not be discussed any further. Mr. Ballentine said he would guess there may be a lot of situations in the Town where the pool heaters are not in compliance with the Code. Mr. Walton told Mr. Ballentine that when you buy a property, you buy the good and the bad. If someone puts an addition on a property and does not get a permit and this is discovered, the property owner has to get a permit or tear the addition down. The violation goes with the property. Mr. Ballentine asked if there was any grandfathering provision if the violation goes a period of time. Mr. Walton said he did not know the time frame for that but there might be some degree where things can be grandfathered in. In this case, part of the pool pump was on the neighbors' property. There was also a survey that said when the permit was issued, the pump was not where it currently is but was on the other side of the wall.

Town Council Member Diamond addressed the Board and said he had a question why money would be spent fixing up a nuisance property like the one on Park Avenue instead of demolishing it. Mr. Walton said Code Enforcement could not demolish. The property has to be condemned by the Building Official and then action taken by the Building Department. There is a property in Town where this is being considered. Mr. Diamond asked if that applied to homesteaded property and Mr. Walton said he did not know about that. Mr. Ramenda said he believed a homesteaded property could be foreclosed on if it was a mechanics lien. Jeff Taylor said a structure has to be declared as an immediate threat to public safety for it to be demolished.

Mr. Hoffman informed Mr. Diamond that it was his understanding that when Bryant Weymer joined the police force, his position in Code Enforcement was going to be replaced. However, because there is a hiring freeze, Code Enforcement is going to be short a member. When Code Enforcement was a priority with Council and it was moved to the police department, it finally got fully staffed and there was a significant increase in compliance which benefited the Town. Mr. Hoffman said he is concerned the reduced staff will result in less compliance. He hopes Mr. Diamond would be supportive of doing anything he could do to fill the position. Mr. Diamond said the Town Council is faced with quite a conundrum because there is a severe imbalance of the budget coming in fiscal years 2012 and 2013. Town Council relies on the Town Manager to listen to Staff as to what positions need to be filled and what does not. He does not know if the Code Enforcement position has been taken out of the budget or if it is just sitting there unfilled. Everyone has to be aware of what the overall problem with the Town is; it is quite severe and this is not the first time we are going to be hearing problems of this nature.

Mr. Hoffman said he received a letter from Town Council President Rosow and he is not sure how it applies to the Code Enforcement Board. Mr. Hoffman read a short paragraph from the letter and asked Mr. Diamond how the special advisors suggested by Mr. Rosow could benefit the Code Board. Mr. Hoffman said he had given this some thought and also discussed it with Staff. He said he could not think of any benefit and asked Mr. Diamond if he had any suggestions. Mr. Diamond said he agreed with the writer of the letter but it was up to any particular board as to whether or not it would be helpful to them. Mr. Fried said the Code Enforcement Board has a reservoir of experience in the code officers and people like Jeff Taylor who provide guidance when issues arise. Mr. Fried said the Board's job is fairly straight forward; they function as a quasi-judicial board. The cases are presented and unless there are extenuating circumstances, the Board functions with the resources it has.

Mr. Ochstein said the issues of foreclosure always come up and there never seems to be an answer. He wonders if the legal staff should perhaps look into this. Mr. Walton said Mr. Randolph is very well versed in the process and should be able to answer any questions.

Mr. Hoffman said since the meetings are broadcast over the internet, he wants to make sure everybody speaks clearly and into the microphone. Mr. Hoffman also says he does not want to ask for a motion until all members have had an opportunity to ask questions. When there are no questions remaining, he will ask for a motion. Many times he has more than one person who wants to make a motion and he will do his best to select different people during the course of the meeting. It is awkward to have a motion proposed when there is still discussion going on. Mr. Hoffman also added that if there are questions about procedures, operations or any item not pertinent to the particular case being heard, then it should occur during this time of the meeting. The Board comment section is not the time to rehash cases.

Sgt. Krauel said this will be the last meeting in Council chambers as phase 2 of the renovations is being started. We are going to be relocating the meetings to Temple Emanuel, 190 N. County Road and will enter the building off of Seminole. The Temple has asked us not to enter through the main office which has a blue awning over the doors. There is an underground parking garage that Board members can use if they get there early enough. There is plenty of off-street parking on Seminole and parking enforcement will be relaxed.

We will either be in the main community room or another room that is capable of holding the number of audience members who normally attend the Code Board. Sgt. Krauel said he has looked at the rooms and he intends to take the Chairman to review the layout. The Town is working on several procedural issues like the call button system and is going to try and make it as convenient as possible.

Sgt. Krauel said the second issue is one that Staff misguided the Board on when it came up concerning a case. The question rose about a contractor not being able to obtain additional permits when they have an outstanding fine. The contractor can go to a different property and get another permit from the Town even though they incurred a violation on another property. Sgt. Krauel said he spoke to Jeff Taylor and John Page, the Director of the Building Department and also the Zoning Administrator, Paul Castro and they concurred. He has since posed the question to Skip Randolph who is in the process of researching a better way to collect on the fines owed by contractors to the Town. Mr. Hoffman asked if this concerned the T&P Pavers case and Sgt. Krauel said it did. He apologized for the mistake and said we were working to resolve it.

IX. Adjournment: