

Town of Palm Beach

Code Enforcement Board

THURSDAY, MARCH 18, 2010, 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: (2:01:37 p.m.)

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

II. Roll Call: (2:01:52 p.m.)

Upon roll call, the following Board members were present: Chairman Timothy Hoffman, Vice Chairman Harris S. Fried, Larry Ochstein, Madelyn Greenberg, Cynthia Van Buren, James M. Ballentine, Jr. and alternate members, W. Anthony Dowell and Scotch Peloso. Member Joel Koeppel was absent (excused).

Staff present: Attorney John Randolph, Captain John Maio, Sgt. Curtis Krauel, Lead Code Enforcement Officer Robert Walton, Code Enforcement Officer Nick Gerry and Recording Secretary Raychel Houston.

Mr. Hoffman advised that due to Mr. Koeppel’s absence, Mr. Dowell would be a voting member today.

III. Approval of the Minutes of February 18, 2010: (2:02:15 p.m.)

MOTION BY MR. FRIED FOR APPROVAL OF THE FEBRUARY 18, 2010 MINUTES

SECONDED BY MR. OCHSTEIN

MOTION PASSED UNANIMOUSLY

IV. Code Enforcement Board Member Oaths: (2:02:31 p.m.)

Recording Secretary Houston administered the Oath of Service to all members present.

V. Administration of the Oath to Town Staff: (2:05:01 p.m.)

Town Staff who would be testifying were sworn in by Recording Secretary Houston.

VI. **Public Hearings:**

A. Case # 10-2705, 332 S. County Road, 332 South County Road LLC (2:05:42)

Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, it is unlawful to have any building or other structure which is in dilapidated condition, an accumulation of debris on private property and grass in excess of 8 inches high, Chapter 42, Section 42-87, exterior walls to be kept painted and in good repair and appurtenances such as walls and canopy awnings to be kept in a safe and good state of repair and Chapter 18, Section 18-241, plumbing and electrical wiring to be maintained in a safe condition and in compliance with the Florida Building Code and the National Electrical Code

Lead Code Enforcement Officer Walton said the Town recommends this case be postponed until April 15, 2010 as there are some zoning issues which need to be resolved.

MOTION BY MS. GREENBERG TO POSTPONE THE CASE UNTIL APRIL 15, 2010

SECONDED BY MR. FRIED

MOTION PASSED UNANIMOUSLY

B. Case # 10-2706, 287 Pendleton Ave., Susan C. Lee (2:06:49)

Violation of Chapter 18, Section 18-241 of the Town of Palm Beach Code of Ordinances and Florida Building Code, Section 105, permits required to construct, enlarge, alter, repair or change the occupancy of a building or structure or to erect, install, repair or replace any electrical, plumbing or gas system, Chapter 42, Section 42-87, all exterior surfacing material to be kept painted and in good repair and Chapter 106, Section 106-159, a clearance of 8 feet, measured vertically from the edges and extending the full width of all sidewalks to be maintained for the safe passage of pedestrians

Code Enforcement Officer Gerry presented the facts of the case and said the violations were discovered during routine patrol. Mr. Gerry said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and the violator be given until April 9, 2010. Compliance could be achieved by removing or relocating the solar panels, obtaining a building permit and final inspection by April 9, 2010.

Paul Castro, Zoning Administrator for the Town, said the property owner would not be able to meet the April deadline because they could not get a permit without a variance from the Town Council and Architectural Commission approval.

Ms. Van Buren said she was going to make a motion to approve the Town's recommendation but based on Mr. Castro's statement, the Board would be asking the

property owner to do something impossible. She asked Mr. Gerry if the recommendation could be changed to just having the solar panels removed and take out the wording to apply for a permit. Mr. Gerry said the reason he used the word relocate is that the solar panels would not be allowed to stay in their present location unless they apply for a variance.

Mr. Castro said the Town Council has given clear direction that fines should start and violators not be given time to apply for a variance because they did work without a permit. This has been the direction over two cases that came to Town Council that were held in abeyance by the Code Board until Council could grant or deny variances and the Council had a concern about that. The Planning, Zoning and Building Department would recommend that the Board proceed, giving them a certain amount of time to remove the solar panels and if they do not remove them, begin the fine and give them a certain date to apply for the variance. Ms. Van Buren said she was not implying the property owner be given more time; she was just thinking about the aspect of them not being able to get a permit. Mr. Fried said he agreed with Ms. Van Buren, that the motion needed to be to just remove the solar panels. Mr. Gerry said the Town is willing to change the recommendation to have the solar panels removed by April 9, 2010. Mr. Hoffman said the solar panels could be removed in one day and he did not know why they needed three weeks to do it, that he believed the beginning of April would be adequate time. Mr. Gerry said the painting work needed to be done as well and it would be better to have the same compliance date for both.

MOTION BY MS. VAN BUREN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL APRIL 9, 2010 TO REMOVE THE SOLAR PANELS AND MAKE THE REQUIRED REPAIRS TO THE EXTERIOR OF THE PROPERTY

SECONDED BY MR. FRIED

MOTION PASSED UNANIMOUSLY

C. [Case # 10-2707, 122 Peruvian Ave., # 14, Christine Lee Marks](#) (2:17:37)

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, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure or install, alter, repair, remove, convert or replace any electrical, mechanical or plumbing system

Code Enforcement Officer Gerry presented the facts of the case and said it was referred to Code Enforcement by the Building Department. Mr. Gerry said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and the violator be given until April 9, 2010 to comply.

(Mr. Hoffman acknowledged the presence of Council Member Kleid in the audience and said the Board appreciated his presence.)

Scott Sloan, who was present on behalf of the property owner, was sworn in by Recording Secretary Houston. Mr. Sloan said he obtained a demolition building permit but was not involved in the project until last week. Mr. Sloan said April 9th would be an unreasonable date as this job is a lot bigger than the few things that had been started incorrectly. Mr. Sloan said he has been a contractor in the Town for 30 years and will do the job right. He said he sat on the Code Board for two terms and knows the rules. They still need to finish plans, submit them and apply for a building permit. He has a demolition permit but that is not adequate. He needs approximately six months to finish the job but it will be done to code and with all the necessary approvals from the Building Department.

Jeff Taylor, Building Official, said this started out as a removal of the air conditioning duct to replace it with smaller duct but the air conditioning scope of work has grown. Mr. Taylor said Mr. Sloan pulled a permit basically so the firewall could be secured, so there would be a one hour envelope around the building in case of a fire on either side or inside the unit. Mr. Taylor said his recommendation is to get the one hour firewalls back up and final out the demolition permit and then they could proceed with the building permit. Mr. Taylor asked Mr. Sloan if he could have the work done to get a final inspection on the demolition permit by April 9th and Mr. Sloan said he could. Mr. Fried asked if there would be any penalty for what had been done so far and Mr. Gerry said there would not be, if they could comply by April 9th. Mr. Ballentine said he was not clear on the fact there was no penalty for not getting the permit in the first place. Mr. Gerry said if the contractor was actively working, they would have been issued a \$250.00 citation. When he found the project, there was no contractor around so only the property owner is cited.

Council Member Kleid said he was concerned with the procedure, as far as contractors who are doing work without permits. He said it appeared to him that the property owner should be able to tell us who these contractors were and the Town could pursue them. Mr. Kleid directed his question to the Building Administrator as to whether records are being kept of contractors and subcontractors who are working in the Town without permits and asked him if anything was being done to try and preclude them from doing further work on the Island. Mr. Taylor said the Town Council granted them the ability to increase the permit fee by 300% and if a contractor repeats the offense, then a complaint is filed with the State of Florida. This is for licensed contractors only. Unlicensed contractors are reported immediately to the State. There was some additional discussion among the Board members and Staff reference the procedure for reporting working without a permit violations and the method for handling these.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE,
ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE
THEM UNTIL APRIL 9, 2010 TO OBTAIN A FINAL INSPECTION ON THE
OPEN DEMOLITION PERMIT
SECONDED BY MR. BALLENTINE
MOTION PASSED UNANIMOUSLY**

D. [Case # 10-2708, 232 Cherry Lane, Robert A. & Louisa A. Dean](#) (2:35:02)

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior surfaces to be maintained in good condition, kept painted, free from chipping and discoloration and appurtenances such as swimming pool equipment, pump and filter to be kept in a good state of repair and the swimming pool water maintained in a clear and sanitary condition

Code Enforcement Officer Gerry presented the facts of the case and presented the photographs into evidence. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until April 9, 2010 to come into compliance.

Collins Phillips was present on behalf of the property owner and was sworn in by Recording Secretary Houston. Mr. Phillips said he believed he could have all of the work completed by April 9th.

**MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS OF \$150.00 AND GIVE THEM UNTIL APRIL 9, 2010 TO COMPLY
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

E. [Case # 10-2709, 215 Brazilian Ave., 215 Brazilian Holding LLC](#) (2:40:52)

Violation of Chapter 134, Section 134-1667 of the Town of Palm Beach Code of Ordinances, fences in front yard setbacks must have landscaping on the street side, consisting of a continuous hedge at least 3 feet in height at the time of planting

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a citizen's complaint. He entered the photographs into evidence. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until April 2, 2010 to come into compliance.

**MOTION BY MS. GREENBERG TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL APRIL 2, 2010 TO COMPLY
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

VII. Fine Consideration:

A. [Case # 10-2700, 2842 S. Ocean Blvd., 2401 2301 00 Trust](#) (2:45:20)

Violation of Chapter 134, Section 134-1702 of the Town of Palm Beach Code of Ordinances, no structure of any nature shall be constructed closer than 150 feet to the designated ocean bulkhead line unless a proper ocean bulkhead exists and Chapter 134,

Section 134-1473 which does not permit any structures or beach buildings with maximum dimensions greater than 20x25 feet and Section 134-1474 which does not permit more than one beach house structure to be erected

Lead Code Enforcement Officer Walton said this case was heard at the February hearing and the property owner was found in non-compliance and given until February 19, 2010 to come into compliance. Mr. Walton said he re-inspected the property on February 22, 2010 and the beach beds have not been removed. The Town recommends a fine in the amount of \$250.00 a day, commencing on February 20, 2010 and continuing until compliance is achieved.

Andrea Shwayri from the Greenberg Traurig law firm was present on behalf of the property owner and was sworn in by Recording Secretary Houston. Ms. Shwayri said the Omphoy Hotel is requesting that the Board issue a stay of the fine pending the outcome of the appeal they have already filed with the Circuit Court. She said they do not believe the beds are a violation of the ordinance nor do they believe they are structures. Ms. Shwayri said they believe the definition of structure in the code is overbroad. Mr. Walton said the Town requests that the fines commence on February 20th and continue until compliance is achieved. Mr. Hoffman asked Mr. Randolph if the Omphoy could come in for a fine reduction if the court found in their favor. Mr. Randolph said the fine would not be imposed if the court found in favor of the Omphoy. Mr. Randolph said the property owner had filed a motion for stay with the Circuit Court and the Town filed a response to the motion but the court has not yet ruled on it. Mr. Randolph said there is nothing that would require the Board to issue a stay of the fine. Mr. Ballentine asked Ms. Shwayri if they had requested a stay for the first offense having to do with the gazebo. Ms. Shwayri said she could not speak to that issue as she was not present at the last hearing. Mr. Walton said there is a current fine running on the property in relation to the gazebo and this would be a second fine. Mr. Ballentine asked if this fine is more than the initial fine and Mr. Walton said this one would be \$250.00 a day also. Mr. Randolph said the motion for stay that had been filed with the court was in regard to the first appeal. There has not been a motion to stay filed in regard to this one with the court and there would not be, until a fine is imposed. Mr. Randolph said he believed the purpose of Ms. Shwayri's presence is to request the Board to stay the fine and absent that, she would go to the court to issue a stay.

Mr. Fried said he wanted to clarify that the Board's decision at the last meeting is being appealed and Ms. Shwayri said that was correct. Mr. Randolph said the decision finding the Omphoy in violation is being appealed. Mr. Fried said he did not believe that a stay was in order and the reason for that was very clear in his mind. Mr. Fried said he believed the Town's decision to put this provision in the code was to prevent unsafe conditions on the beach, that if these structures were allowed to stay up year around, potential damage from hurricanes could occur. Mr. Fried said he believed an unsafe condition was being created whether one argues about the interpretation of structure or not. In the event of another hurricane, the beds are potential weapons out on the beach and he told Ms. Shwayri she could take that message back to her clients. Ms. Shwayri said she was not present to argue about what the ordinance actually says. She said she

was just present to request the Board enter a stay of the fine pending the appeal. Their rationale is if they win on appeal, the Town would have to give them back what they paid anyway. She said she respected the decision the Board has made but her client wanted to appeal. Mr. Walton said he took exception to what Ms. Shwayri just said, because the Board assessed hearing costs and he did not know that the court would make the Town return those. Ms. Shwayri said she was speaking only to the fines. Mr. Hoffman said he was in favor of what Mr. Fried had said.

**MOTION BY MR. FRIED TO IMPOSE A FINE IN THE AMOUNT OF \$250.00 A DAY, COMMENCING ON FEBRUARY 20, 2010 AND CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

During discussion on the motion, Mr. Fried asked Mr. Randolph if the Town was able to recover their legal fees if they were successful on the appeal and if they lost, did they have to pay the other party's legal fees. Mr. Randolph said the answer to both of those questions was no.

Mr. Randolph said he assumed that the motion included a denial of the stay that was requested. Mr. Randolph said the Board passed the Staff recommendation of a fine of \$250.00 a day but there was nothing said about the request for the stay and asked Mr. Fried if he wanted to include that in his motion. Mr. Randolph asked Mr. Fried to make a second motion with regard to that.

**MOTION BY MR. FRIED TO DENY THE PROPERTY OWNER'S REQUEST FOR A STAY OF THE FINE
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

Mr. Randolph said the record would incorporate what Mr. Fried said with regard to the reasons a stay would not be issued, regarding safety. Ms. Shwayri asked if the Board issued an order or some type of writing to the effect of the proceedings and Mr. Randolph said they did.

C. [Case # 10-2692, 7 Lagomar Road, Dolores M. Swanson](#) (2:54:14)

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 or structure and all exterior surfacing material shall be painted and properties maintained in good condition

Lead Code Enforcement Officer said the property owner was found in non-compliance at the January 2010 meeting and given until February 11, 2010 to come into compliance. At the February hearing, the Board gave them an extension until March. The Town recommends an additional extension of time because at the final inspection, a beam under the dock had fallen down. Mr. Walton said he and Mr. Taylor, the Building Official,

requested the property manager get a letter from an engineer certifying the beam was structurally sound. Dixon Engineering sent a letter advising an additional repair was needed to the strut. Since the property owner only received this letter yesterday, the Town recommends an extension of time until April 9, 2010 to come into compliance.

**MOTION BY MS. VAN BUREN TO GIVE THE VIOLATOR ADDITIONAL
TIME TO COMPLY, UNTIL APRIL 9, 2010
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

VIII. Board Comments: (2:56:25 p.m.)

Mr. Ballentine said he liked the letter the Board sent to the Town Council. However, it seems to him that the letter and the ordinance taken from another city in Florida directed its attention to abandoned property. Mr. Ballentine said his concern is that they have not included in that effort instances where people are living in the home who refuse to pay the fine. He said he hoped Ms. Coniglio's committee that would be addressing this issue also looked at those situations. Mr. Randolph said he would like to pass out, for informational purposes, the ordinance that was drafted and sent to the Ordinances, Rules and Standards Committee for their consideration. Mr. Randolph said that Mr. Ballentine was correct, that it only addressed abandoned real property. One of the Board's concerns was that the Town might be going to see more of those cases. The Town wanted to have a mechanism in place to require the banks to take care of these properties and that is what this ordinance is intended to do. In regard to Mr. Ballentine's second question, Mr. Randolph said the Town has to follow the statute as it relates to the collection of these fines and homesteaded properties are not subject to foreclosure. When the fines are not paid on non-homesteaded properties, the Board recommends a foreclosure action to Town Council. There are several properties now in the foreclosure process. Those have been slow because there are so many foreclosures now in Palm Beach County and the court is not getting the final judgments out very quickly. Mr. Randolph said that Code Enforcement also pursues, by letter and contact, the fines that are outstanding and does all it can to collect those fines.

Mr. Ballentine said he understood the inability to foreclose on a homesteaded property but if there are running fines, this means the individuals have not corrected the problem. Since they have not corrected the problem, it becomes an eyesore in Town that can affect the property value of other properties around this particular piece of property. Mr. Ballentine said he thought there was some possibility of going to civil court as a public nuisance. Mr. Randolph said that possibility exists, if the Town wanted to go to the effort and expense of filing some sort of public nuisance claim. It would be quite an expensive undertaking of the Town Council if it were to take those kinds of actions. Mr. Ballentine said he would leave it to the Town Council to make that decision. Mr. Randolph said the issue is not collecting the money; the issue is getting the work done to improve the look of the property. Mr. Randolph said there are some scofflaws that are simply never going to comply, either because they are just scofflaws or because they cannot afford it. Mr. Randolph said the code enforcement officers do all they can to get these people to

come into compliance by continuing to contact them. Mr. Randolph said there is in effect a provision in the Code that allows the Town to go in and correct the violation and then put a lien on the property.

Mr. Ballentine asked if it would be out of order at the next meeting during this period of time to have the code enforcement officers speak to the more egregious violations on the running fines list and what actions are being taken. Mr. Randolph said it is not out of order to ask the Staff to make a report in that regard. Ms. Houston advised the Board that three of the properties on the running fines list were already in foreclosure action and the others, with one exception, are homesteaded. Mr. Dowell said there is a million dollars in account receivables and he does not see any money being collected. He then asked Mr. Randolph where the Town stood in line on the Brandon property. Mr. Randolph said he could bring the Board up to date at the next meeting. He said motions for default have been filed on the foreclosure cases and have been waiting for months to get an order. Mr. Dowell asked if there was a way to speed the process up and Mr. Randolph said if there was, they would have been doing it. Mr. Ballentine said 151 Chilean Ave has two running fines and he does not know what the original violation was and what needs to be done to stop the fine. Mr. Gerry said he was just at this property yesterday and the property owner does not want to cooperate and does not want code enforcement on the property and there is not much that can be done. Mr. Gerry said he has made contact with the property owner and explained the situation to him and he just does not want to comply.

In response to Mr. Dowell's question about liens on homesteaded property, Mr. Randolph said he is not sure a lien is even valid on homesteaded property. There is some case law that indicates you cannot lien a homesteaded property. Ms. Houston advised there is a case from the 3rd District Court of Appeals that says you cannot put a lien on homesteaded property. There is a case in the 4th District, which we are in, which says you can. There are two opposing case laws but it has never been taken to the Supreme Court to decide which case would be upheld. Since we are in the 4th District, we continue to put the liens on homesteaded property.

Ms. Greenberg said there was a case that came up today that is one of the same names on the running fines list and the property is being foreclosed on, but it is in the name of a trust. The case today is a different address and the same name without a trust. Ms. Houston said one of the properties is homesteaded and the other that the Town is foreclosing on is not. Ms. Houston said the property owner has three properties in the Town and this will now be the third one with a code enforcement action against it.

IX. Adjournment: (3:15:14 p.m.)

The meeting was adjourned without benefit of motion.