

Town of Palm Beach

Code Enforcement Board Minutes

THURSDAY, JANUARY 21, 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: (2:01:27 p.m.)

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

II. Roll Call: (2:01:56 p.m.)

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

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 acknowledged Council Member Diamond and Council President Pro-Tem Coniglio who were both in the audience.)

III. Approval of the Minutes of November 19, 2009: (2:02:25 p.m.)

**MOTION BY MR. KOEPPEL FOR APPROVAL OF THE NOVEMBER 19, 2009 MINUTES
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

IV. Administration of the Oath to Town Staff: (2:03:04 p.m.)

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

V. Public Hearings:

A. [Case # 09-2655, 2295 S. Ocean Blvd., 2295 South Ocean Blvd. Corp.](#)

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, appurtenances such as signs to be maintained in a good state or repair

Code Enforcement Officer Gerry requested the case be dismissed for compliance.

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

B. [Case # 09-2665, 139 N. County Road, Paramount Church, Inc.](#)

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

Code Enforcement Officer Gerry said this case had been previously postponed so the respondent could go before the January 20th Landmarks Commission for approval. Dwight Stevens from the Paramount Church attended that meeting and the Landmarks Commission did approve the guardrail architectural style that was submitted. Code Enforcement Officer Gerry presented the facts of the case and said the Town recommended a finding of non-compliance, no administrative costs be assessed and for the property to be brought into compliance by August 13, 2010.

Dwight Stevens was sworn in by Ms. Houston. Mr. Stevens said they appreciated the time frame of August for compliance because they are waiting for estimates of the costs but are talking in the neighborhood of \$200,000 to \$300,000 plus. The good news is that the Preservation Foundation gave them some leads on available grants for historic properties and they will explore that.

Mr. Ochstein asked about the security of the area and Mr. Stevens said there is no opportunity to get on the decks at all. Mr. Walton said chain link fence gates with locks on them have been installed. Mr. Koeppel asked about a lock on the door leading out from the building onto the porch and Mr. Stevens said any access to the courtyard from offices have locks installed so there is no access. Mr. Koeppel asked if they were going to be in a position to get the work funded and done by August if they cannot get grants and Mr. Stevens said he hoped so.

Mr. Fried said grants take time and asked if there was a backup plan to get the project financed. Mr. Stevens said there is a board meeting of the church corporation today at 3:30 p.m. to discuss this because they realize they need some options other than the grant applications. Mr. Fried said the railings appear to be in very fragile condition and asked Mr. Walton if there was any concern they

could fall over into the street. Mr. Walton said the building manager, Tony Stanley had secured the railings and they were confident they would stay in place. Mr. Koeppel asked Mr. Randolph if the church would have to go before Town Council and asked for an extension if they were not able to comply in time. Mr. Randolph said the Landmarks approval was good for a year and Mr. Koeppel said he was talking about time frames set by the Town for construction projects. Mr. Randolph said that was under a specific ordinance and this does not fall in that category.

Mr. Dowell asked Mr. Stevens if the church owned the property free and clear and Mr. Stevens said they had a mortgage. Mr. Dowell asked if there was enough equity if they needed it to finance the project and Mr. Stevens said there was a lot of equity in the building. He said they had been pre-approved for future advances on their mortgage and that is one of the things they are going to consider in terms of funding but they would prefer to pursue grant money if it was available.

**MOTION BY MR. KOEPPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, WAIVE THE ADMINISTRATIVE COSTS AND GIVE THEM UNTIL AUGUST 13, 2010 TO COMPLY
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

C. [Case # 09-2672, 2842 S. Ocean Blvd., 2401 2301 00 Trust](#)

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

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a citizen complaint. He said he has been in discussions with the attorney, Al Malefatto as well as the property owner. The case was postponed twice to give them time to apply for a variance from Town Council which Town Council denied. The property has not been brought into compliance. Mr. Walton said Mr. Castro was present to speak or to respond to anything the attorneys had to say. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until January 22, 2010 to remove the structure. The Town Council already told them they needed to remove the structure and it is still there. Mr. Randolph said the Town has the burden of proof of showing there has been a violation and Mr. Castro or Mr. Taylor should address this and indicate what the code violations are and what proof the Town has that it is a violation.

Paul Castro, Zoning Administrator, said the structure is a structure under the definition of the Town's code and he quoted Section 134-2. The Town considers it a beach house structure because that is the only type of structure allowed in the beach area district other than incidental accessory items to a beach house

structure. The applicant was advised he needed to apply for a special exception to have a beach house structure for the towel/cabana employee. The Town Council denied the special exception and variance and told the applicant's attorney to remove the structures immediately and that has not happened.

Mr. Hoffman asked if the structure had any electricity or plumbing to it and Mr. Castro said it did not. Mr. Hoffman asked if there was a problem in getting it removed in one day and Mr. Castro said he did not know the answer to that. He did say it could be taken apart and removed fairly easily but he did not know what the timing would be. Mr. Koeppel asked Mr. Castro if he knew why the Town Council rejected the variance. Mr. Castro said some of the neighbors to the south objected because the property owner had also placed four beach cabana beds that are not part of this case on the beach and this was done without Town permission as well. After this structure was placed on the beach, the property owner placed four other very large beach bed type structures on the beach without permission from the Town. Mr. Randolph said one of the concerns of Council when they heard this was the fact this structure was already in place when they came to ask for the special exception and variance. The Council basically stated they wanted the applicant to come back to them with an application with "clean hands" after they removed this structure and the other structures which he cannot speak about because they are not part of this case. Although the Council denied the application, they waived the restriction on having to wait a year to come back with another application. Mr. Castro said Council also told the applicant that when they came back, two other conditions were that they had to meet with the neighbors and the principal for the hotel had to be at the meeting.

Jonathan Chane, an attorney with Greenberg Traurig declined to be sworn in, advising he was not present to testify. Mr. Chane said he represented the owner of the resort. Mr. Chane questioned Mr. Walton reference his employment with the Town and his duties. He also questioned Mr. Walton about his inspection of the cabana and asked him if he was aware of when the cabana was moved in September, 2009. He asked Mr. Walton if he recalled the owner of the property being contacted by the Department of Environmental Protection and Mr. Walton said he did. He asked Mr. Walton what the purpose of that contact was and Mr. Walton said it was because of concern for the turtles. The structure was placed on the beach during turtle season and it was unknown if it had been placed on top of a turtle nest which would have been a crime, endangerment of an endangered species. There was also some discrepancy as to the location of it because the structure showed on some plans and did not show on other plans. Mr. Chane asked Mr. Walton if he was aware of a cabana on the site prior to September, 2009 and Mr. Walton said he did not know. Mr. Chane questioned Mr. Walton about the definition of a structure and certain areas of the Code. Mr. Chane handed Mr. Walton a document he requested be entered into the record as Exhibit 1 and asked him if he had seen it before. Mr. Walton said he had seen numerous documents regarding this matter but he did not know if he had seen this exact document or not. Mr. Chane asked Mr. Walton to read the date on the bottom

right hand corner of the document and Mr. Walton said the highlighted date was 12-12-05. Mr. Chane asked if there was a beach cabana referenced on the document and Mr. Walton said there was a highlighted item that said wood gazebo. Mr. Chane continued with additional questions about the gazebo. Mr. Chane handed Mr. Walton a document he entered into the record as Exhibit 2 and asked him if he had ever seen it before. Mr. Walton said he had and said it was a site plan showing what was referred to as a 12x12 structure and it is dated 03-10-09. Mr. Chane asked if there was anywhere on the site plan that showed it was reviewed by the Town of Palm Beach and Mr. Walton said it indicated reviewed by the Town on 03-10-09 but he was unable to determine who reviewed it. Mr. Chane asked Mr. Walton if there was anything on the document striking out the gazebo or cabana and he said he did not see anything but there was a further note at the bottom. Mr. Chane asked Mr. Walton if he knew the resolution of the turtle nesting issue with the Department of Environmental Protection and Mr. Walton said he did not believe the hotel was cited.

Mr. Chane next questioned Mr. Castro reference his employment with the Town and what his duties were as the Zoning Administrator. Mr. Chane asked Mr. Castro if he was familiar with the cabana at issue in this matter and if he had personally examined it and Mr. Castro replied in the affirmative to both questions. Mr. Chane continued to question Mr. Castro about the cabana. He then questioned Mr. Castro about the exhibits previously entered into the record. Mr. Chane asked Mr. Castro if he was aware of the Notice of Violation issued by Mr. Walton and Mr. Castro said he was and had assisted in its preparation. Mr. Chane asked if the Notice of Violation defined a structure and Mr. Castro said that under Chapter 134 it is very clear what the definition of a structure is and the citation is out of Chapter 134.

Mr. Chane called Adam Schlesinger, president of CSCPB Beach Ltd. as a witness and he was sworn in by Ms. Houston. In response to Mr. Chane's question, Mr. Schlesinger said the Omphoy Hotel was acquired in 2006. Mr. Chane asked him if there was a cabana or gazebo located behind the hotel at that time and Mr. Schlesinger said there was. Mr. Chane asked Mr. Schlesinger if that gazebo had been replaced and Mr. Schlesinger said yes. Mr. Chane had some additional questions about the new cabana and asked Mr. Schlesinger if it had been moved and to explain the circumstances. Mr. Schlesinger said CSC was under the impression it had permission to place the portable gazebo on the sand and it was brought to their attention there might be an issue with the DEP. The DEP told them they had to remove the gazebo during turtle season and CSC would have DEP's support and approval to put it back in place on the sand after turtle season and keep it there on a permanent basis. Mr. Chane asked Mr. Schlesinger if he ever spoke to Jeff Taylor regarding the cabana and he said he had, that he wanted to know if the cabana fell under Mr. Taylor's purview as a structure and if a building permit was required. Mr. Taylor told him they did not need a permit and it did not have anything to do with his department. Mr. Chane asked Mr. Schlesinger if he had engaged in discussions with the Town about obtaining a

variance for the structure/cabana and Mr. Schlesinger said they had and the Code Enforcement hearing was moved several times as a result of that. Mr. Chane asked Mr. Schlesinger if the Town ever indicated the Town Council was not going to approve the variance and he said no, that all indications given to him was that it was going to be approved.

Mr. Castro asked Mr. Schlesinger if he was at the meeting where filing for the variance was discussed and he said he was not. Mr. Castro asked him who told him they would get the variance for the cabana and Mr. Schlesinger said it was his attorneys and his father, Richard Schlesinger. Mr. Castro asked him if he was ever told this by Staff and he said no. Mr. Castro asked him if the cabana that is on the property was there prior to his purchase of the hotel and he said this is a new cabana. Mr. Castro asked Mr. Schlesinger if his application indicated he was adding a new gazebo or cabana on the property on the other side of Ocean Blvd which they did not own and which is not contiguous to their property and Mr. Schlesinger asked him to rephrase the question. Mr. Castro said this property is not abutting the hotel property but is across the old S. Ocean Blvd. right of way and asked him if they identified they were adding a new beach cabana on the property. Mr. Schlesinger said he did not remember. Mr. Castro said a non-conforming building, once it is removed and replaced has to comply with all codes and ordinances in effect today. Once 50% of the volume was gone, they had to comply with the current Town code. In this instance, while they have historically allowed beach chairs and umbrellas, there is only one use that is permitted in the beach area zoning district and that is incidental beach bathing/beach cabana uses for the property. Once the structure was removed, the applicant would have been required to come back to the Council for special exception and variance relief in order to keep the beach house structure there. If it is not considered a beach house structure, incidental or accessory to the hotel, they would not be permitted to have it. Mr. Castro said the Town is not sure the previous structure that was there was ever permitted, that Staff did not know about it until after the fact when this new beach house cabana was placed there.

Mr. Walton said Mr. Taylor was present to answer any questions the Board might have and repeated that the Town requests a finding of non-compliance, administrative costs in the amount of \$150.00 and they be given until January 22, 2010 to remove the structure.

Mr. Ballentine asked Mr. Chane what his contention was and Mr. Chane said the first time his client was ever notified there was an issue with the cabana was when the Department of Environmental Protection contacted his client out of concern for turtle nesting. His client met with the Department and removed the portable cabana until the end of turtle nesting season after which time it was placed back in the same general location it has been in since they acquired the property in 2005 or 2006. Every Town survey shows the cabana located there. After the Department of Environmental Protection contacted his client, the Town then contacted his client and issued this Notice of Violation. The Notice of Violation

had two issues, one that it was too close to the bulkhead and the other that it was within the Palm Beach County right of way. It was removed from the right of way and the only issue is that it is a structure. When the Town contacted his client and said there was a violation and even though they did not agree a variance was needed, they agreed to apply for one. However, they did not waive their objection there was a variance needed. What is important here is that there has always been a cabana on this site. The second issue is that this Code is so broad that it applies to anything and not just on a beach; it applies to anything in the Town of Palm Beach sitting on the ground. That is so broad, it is impossible for his client to interpret the Code in any meaningful way and know whether he is in violation or not. The Town Council turned down the variance for reasons unknown to him because he was not present. Mr. Chane said that Mr. Castro testified at the January 13th hearing that the cabana met Code and Mr. Schlesinger testified that Mr. Taylor told him he did not need a permit to construct the cabana. Mr. Chane said that since the cabana has been there for such a long time, it is grandfathered in. It was replaced but it is the same type of cabana and it can be removed in the event of a storm, it can be removed at any time. Because it is not permanent, it is not a structure. Mr. Chane said this ordinance is overbroad and the Notice of Violation should be rejected simply because of that. Mr. Ballentine asked him if these same arguments were made at the time they applied for the variance. Mr. Chane said he listened to the hearing and the same arguments were made to some extent. He said we are talking about different issues here, a code violation, so those issues were not raised. The breadth of the statute was not ever raised because it was not the forum for that type of argument.

Mr. Fried told Mr. Chane he needed to get his facts straight, that Mr. Chane kept saying his clients were under the impression the variance would be approved. Mr. Fried said Mr. Schlesinger testified he was led to that belief by his own lawyers and it was quite clear in his exchange with Mr. Castro that he never got any approval from the Town and was never led to believe an approval would be forthcoming from the Town. Mr. Fried said Mr. Chane also mentioned the word grandfathered and if that is his argument, Mr. Castro already clarified that, that if a structure was on a site plan and then changed by 50%, then they would have to come into compliance with the Code. Mr. Fried said the Code section cited is clear in that it says no structure of any nature shall be constructed so it is not talking about trash cans or beach chairs. Mr. Fried said the cabana is a structure in his mind and it would seem all elements of this particular code section have been met. Mr. Fried asked if this structure was within 150 feet to the designated ocean bulkhead line and Mr. Castro said it was not and that is why they were asking for relief from the Town Council.

(Mr. Hoffman acknowledged the presence of Council Member Kleid in the audience)

Mr. Castro said there were a couple of things he would like to address. The Town has no record of a permit ever being issued for the gazebo and the only way you

are grandfathered is if it was legally put there or if it was there and has historically been there over time, not replaced. When the determination was made that this was a beach house structure and required special exception, site plan review and variance, the applicant had the opportunity to appeal the administrative decision of Staff under Chapter 134, within 30 days and they never did. If they had an issue with the interpretation of the Code, they had their opportunity and did not take that.

Mr. Taylor, Town Building Official, addressed the Board and said he had several meetings with Mr. Schlesinger and he said he did not specifically remember the meeting where he was asked about a permit. If he did tell Mr. Schlesinger there was no permit required, he was mistaken and he quoted Section 105.1 and Section 107.1 under Permits.

Mr. Chane said the only ruling that has occurred was the Town Council's and he was not aware of any other ruling that would have required their appeal. He entered into the record as Exhibit 3 a letter dated September 16, 2009 from Mr. Malefatto to the Town Attorney that they did not agree a variance was necessary but agreed to apply.

Mr. Koeppel said his personal feeling is that rather than requiring the structure to be taken down immediately, they be given the opportunity to make an application for permit and go before the Board again. Mr. Castro said the Town Council has made it very clear to Staff that when people do things without permits or permission, they do not want the Code Enforcement Division of the police department to wait to see what decision they get from Council. They want code enforcement and the Code Enforcement Board to look at each case and make determinations and not provide them the ability to try to remedy violations through Town Council. Town Council was very direct that not only did they want this structure off the beach but the other four beach house structures that are not part of this case. Their direction to the applicant was to remove them immediately and they are still there. Mr. Koeppel said there was an exception to every rule and because of the operation of the hotel and the effect it may have on the operation and the convenience of guests, there should be some flexibility. He said this is not the type of situation that is causing injury to someone.

Ms. Greenberg said she understood the argument from both sides but the Town Council did not grant the variance and it leaves the Board no choice but to enforce the Code and to do otherwise would be second guessing the Town Council's decision. Mr. Fried asked Mr. Walton if there were structures of a similar nature along the beach in a similar location to the ocean. Mr. Walton said he is not aware of a similar situation to this.

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

**OF \$150.00 AND GIVE THEM UNTIL JANUARY 22, 2010 TO REMOVE
THE STRUCTURE
SECONDED BY MS. VAN BUREN
MOTION PASSED 6-1 WITH MR. KOEPPPEL DISSENTING**

D. [Case # 10-2690, 110 Angler Ave., Stephen J. Macari](#)

REPEAT Violation of Chapter 46, Section 46-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and yard grass to be maintained in good condition and Chapter 42, Section 42-87, roofs to be maintained so as not to leak, all exterior surfacing material to be in good repair and painted

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a routine inspection. This property was previously cited in April 2008 and found in non-compliance. A daily fine ran for 54 days and the amount due was \$27000. The house was brought into compliance and the fine was paid down by \$10,000 to \$17,000. Mr. Walton presented photographs of the property into the record. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and as a repeat violation, a daily fine in the amount of \$350.00 be assessed starting January 22, 2010.

Barry Lerner was sworn in by Ms. Houston and said he lived across the street from this house and had been watching it for years. In addition to the way it looks and the disrepair, it is dangerous. The back door is open and the kids who go surfing use the driveway and maybe even go into the house. There are rodents and if he had the power, he would ask for the house to be razed. There are little kids in the neighborhood that could go into the house.

Amy Lerner was sworn in by Ms. Houston and said she has lived at 201 Ocean Terrace for 26 years and she is appalled the Town has allowed this house to deteriorate. The structure itself is a danger. There is no house on this island that compares to this house. Ms. Lerner said she knew the former owner who must be twirling in his grave. When he was 90, he planted coconuts in the optimism he would live to see them grow and they have grown and flourished but the house has completely deteriorated and it is an embarrassment.

Mr. Walton said the Town has a foreclosure action against the property and he appreciates the neighbors who have taken the time out of their day to testify. Mr. Hoffman said the only authority this Board has is a fine; they do not have the authority to raze the house.

Mr. Lerner asked who owns the house and Mr. Walton said he has been told the bank owns the house but the tax assessor records list Stephen Macari as the owner. Mr. Lerner asked where Mr. Macari is and Mr. Walton said he did not

know. Mr. Lerner asked if the doors could be secured so kids could not get in and said it was a disaster waiting to happen.

Mr. Dowell said this was an issue that is going to happen all over Town and he has complained vociferously to Public Works. Mr. Dowell said the Town is remiss in not going in and cleaning this property up as it is a disgrace. Mr. Hoffman asked Mr. Dowell to keep these comments until the Comments portion of the agenda. Ms. Van Buren asked if there was any way to make the property more secure and Mr. Walton said he would speak to other Town departments and see what could be done. Mr. Koepfel suggested a chain be put across the driveway so the property could not be abused. Mr. Fried asked about the status of the foreclosure and Mr. Randolph said he could send the Board the latest update on it. Mr. Ochstein said he agreed with Mr. Koepfel's earlier comment that the daily fine needed to be \$500.00. Mr. Walton said the Town did not object to that.

**MOTION BY MR. KOEPEL TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND ORDER THEM TO PAY A DAILY FINE OF \$500.00 A DAY COMMENCING ON JANUARY 22, 2010 AND CONTINUING UNTIL COMPLIANCE IS ACHIEVED
SECONDED BY MR. OCHSTEIN
MOTION PASSED UNANIMOUSLY**

E. [Case # 10-2691, 893 S. County Road, Joseph Cain](#)

Violation of Chapter 42, Section 42-86 of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted and properties to be maintained in good condition with grass no greater than 8" in height.

Lead Code Enforcement Officer Walton presented the facts of the case and said it was the result of a citizen complaint. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until January 26, 2010 to come into compliance. Mr. Koepfel asked if the house was occupied and Mr. Walton said it was vacant.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL JANUARY 26, 2010 TO COMPLY
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

F. [Case # 10-2692, 7 Lagomar Road, Dolores M. Swanson](#)

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 Walton presented the facts of the case and said he had received a letter from Ms. Swanson advising that all repairs would be completed by November 30, 2009 but the repairs have not been done. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until February 11, 2010 to comply.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL FEBRUARY 11, 2010 TO COMPLY
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

G. [Case # 10-2693, 361 S. County Rd., 361 South County Road LLC](#)

Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, exterior walls shall be reasonable free of cracks or holes through which weather elements can enter the building or structure and shall be painted and in good repair and properties are to be maintained in good condition, Chapter 134, Section 134-2404 of the Code does not permit more than one sign advertising the sale or rental of any property unless such property fronts upon more than one street and Chapter 114, Section 114-32, a business tax receipt is required for each apartment unit

Lead Code Enforcement Officer Walton presented the facts of the case and said although the signs have been removed and the business tax receipt issue resolved, the repairs have not been made. Mr. Walton entered photographs of the property into the record. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until April 12, 2010 to comply.

**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 12, 2010 TO COMPLY
SECONDED BY MR. BALLENTINE
MOTION PASSED UNANIMOUSLY**

H. [Case # 10-2694, 176 Sunset Ave., 176 Sunset Parking LLC](#)

Violation of Chapter 42, Section 42-86 (3) and Section 42-86 (18) of the Town of Palm Beach Code of Ordinances, unsightly, unsafe or unsanitary conditions not permitted, grass not to exceed 8" in height and storage of trash/debris on private property not allowed

Lead Code Enforcement Officer Walton presented the facts of the case and said the property has been brought into compliance but not within the time allotted by the code enforcement officer. Mr. Walton entered photographs into the record

and said the Town recommends a finding of non-compliance, no administrative costs be assessed and no further action taken.

**MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, NO ADMINISTRATIVE COSTS BE ASSESSED AND NO FURTHER ACTION
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY**

I. [Case # 10-2695, 130 Sunrise Ave., PH 9, Rita Schneider](#)

Violation of Chapter 18, Section 18-242 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 presented the facts of the case and said no permit has been applied for as of this date. Mr. Walton entered the photographs into the record and said the Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to give them until February 16, 2010 to obtain all required permits and inspections.

**MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND GIVE THEM UNTIL FEBRUARY 16, 2010 TO COMPLY
SECONDED BY MS. VAN BUREN
MOTION PASSED UNANIMOUSLY**

J. [Case # 10-2696, 210 Emerald Lane, 210 Emerald Lane LLC](#)

Violation of Chapter 18, Section 18-242 of the Town of Palm Beach Code of Ordinances, building permits required to construct, install, repair or alter any building or building system and Chapter 42, Section 42-86, unsightly, unsafe or unsanitary conditions not permitted and the storage of trash and debris on private property prohibited

Lead Code Enforcement Officer Walton said the Town recommends this case be dismissed as compliance has been obtained.

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

K. [Case # 10-2697, 1486 N. Lake Way, Lopez Group, Inc.](#)

Violation of Chapter 42, Section 42-230 of the Town of Palm Beach Code of Ordinances, leaf blower equipment in excess of 65 Db

Lead Code Enforcement Officer Walton said the Town recommends this case be dismissed as the fine was paid prior to the hearing.

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

L. [Case # 10-2698, 1 S. County Road, Paradise Fund](#)

Violation of Chapter 78, Section 78-101 of the Town of Palm Beach Code of Ordinances, permit required for solicitation of contributions for any charitable purpose in the Town of Palm Beach

Lead Code Enforcement Officer Walton said the Town recommends the case be dismissed as a charitable solicitation permit was applied for today.

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

M. Case # 10-2699, 150 Worth Ave., # 125, Tory Burch & Worth Avenue Assoc Ltd
Violation of Chapter 38, Section 38-35 (b) of the Town of Palm Beach Code of Ordinances, burglar alarm fines not paid

Sgt. Curtis Krauel presented the facts of the case and said contact was made with the Loss Prevention Manager of the corporate offices of Tory Burch and the check has been mailed. The Town recommends the time for compliance be extended to February 12, 2010 and if it is not paid, the case will be heard at the February meeting.

**MOTION BY MR. KOEPPPEL TO GIVE THE VIOLATOR ADDITIONAL
TIME TO COMPLY, UNTIL FEBRUARY 12, 2010
SECONDED BY MR. FRIED
MOTION PASSED UNANIMOUSLY**

VI. Fine Consideration:

[Case # 07-2097, 333 Sunset Ave., Royal Poinciana South](#)

Violation of Chapter 134, Section 134-416 (d), Section 134-417 and Section 134-418 of the Town of Palm Beach Code of Ordinances, when any building or structure or part thereof which is nonconforming is altered, changed or replaced, the non-conforming building or structure or part thereof shall thereafter conform to the regulations of the district in which such building or structure is located and the terminated nonconformity shall not thereafter be resumed nor shall any additional nonconformity be permitted

Sgt. Curtis Krauel gave a synopsis of the case which was originally heard in 2007 and again in June, 2008. Both of these cases were appealed to the 15th Judicial Circuit Court and on December 18, 2009, the court affirmed the decision of the Code Enforcement Board's order. Town Staff has been working cordially with Eric Cristu, legal representative for Royal Poinciana South and an amicable resolution has been reached through a stipulation agreement. The agreement is a legally binding contract between the Town and Royal Poinciana South and has been reviewed by Mr. Randolph.

Sgt. Krauel said he would like to specifically address a few of the covenants which Staff feels clearly reflect the property owner's intent and effort to achieve compliance. In paragraph A, Royal Poinciana South agrees not to file any further appeals in this matter. In paragraph C, Royal Poinciana agrees to pay the outstanding hearing costs of \$300.00 within 10 days of the agreement being executed. Paragraph G sets forth a completion date of November 1, 2010 and should the work not be completed by that date, a \$250.00 per day violation would be instituted and retroactive to January 22, 2010. Mr. Cristu could not attend today's hearing but requested that should the Board not approve this agreement, the case be postponed to the February 18, 2010 meeting so he could be present and address any Board questions or concerns. Sgt. Krauel said the Town recommends the stipulation agreement be accepted with the terms and conditions therein and no further action be taken.

**MOTION BY MR. FRIED TO ACCEPT THE STIPULATION
AGREEMENT
SECONDED BY MR. KOEPEL
MOTION PASSED UNANIMOUSLY**

VII. Board Comments: (3:54:24 p.m.)

Mr. Dowell said approximately 25% of all mortgages in the country are "under water" although it might not be that high in Palm Beach. He said he sees a slow deterioration in the Town and there should be some procedure in place for the Town to send a crew in and clean these places up. Mr. Dowell asked Mr. Randolph about Town liens and Mr. Randolph said first mortgages in existence prior to the existence of the code enforcement lien will take precedence. Mr. Randolph said we do have in place the ability to go to a property and clean it up and the Town has used that but there are due process provisions that cause delays. Mr. Randolph said that if a property got too bad, the Town has the right to condemn it.

Mr. Ballentine said he would like to discuss an issue where an individual has considerable fines but the property is homesteaded and being occupied. The property is affecting the property values in the area and his question is what action can be taken in civil court that would get results. Mr. Randolph said a lien is not effective against homesteaded property. A civil suit or a public nuisance action

could be brought for mandatory injunctive relief but that would require litigation. Mr. Ballentine asked if that had been considered and Mr. Randolph said he believed he knew the property Mr. Ballentine is referring to and he does not think that has been considered. Mr. Ballentine said some action should be taken. Mr. Randolph said the Board could bring the property to the attention of the Town Council and ask that it be looked at.

Council Member Kleid addressed the Board and said he was glad he was present to hear the comments and believed the Board should express their opinion to the entire Town Council. Mr. Kleid said there has to be better coordination between Code Enforcement, Police, Public Works and the Building Department. Mr. Kleid said Code Enforcement should be reaching out to other departments when these things are occurring because this is an abomination that should not be tolerated. Mr. Kleid said he welcomed the comments and believed the Board should make their comments known to the Town Council in some type of formal report so they all hear it at the same time.

Captain Maio said he wanted to address the Lerner's' concerns. He said he spoke to them outside after they left the meeting and the property is going to be checked on a regular basis. We will also address immediate life safety issues and if there is anything the Town can do legally to prevent a life safety issue, we will do that. There will be continued diligence on abatement and the same diligence on long term legal remedies. Capt. Maio said he discussed with the Lerner's some of the obstacles we face in being able to maintain properties on a regular basis.

Mr. Ballentine asked if the Chairman could communicate with each individual Town Council member and advise them that the Code Enforcement Board thinks this is a serious problem in the community that deserves the Town Council's attention. Mr. Randolph said the Chairman could ask that he be provided time on the Council agenda to talk about the issue. Mr. Hoffman said the Board makes an annual presentation to the Council in April. Ms. Houston advised it would be May this year. Mr. Hoffman said he believed that would be an appropriate time for Staff and the Chairman to make that presentation. Mr. Randolph said there is nothing that would preclude the Board from making a special presentation to address this particular issue which would not be part of the annual presentation. Mr. Fried said maybe the first thing to do is prepare a letter and coordination is a critical aspect of the process. Mr. Hoffman said he had no problem doing that if the Board asks him to do it. Mr. Randolph said if a motion was made to do this, it would appear on the minutes. Mr. Koeppel suggested that if a letter was going to be written, to make certain the Chairman got everyone's thoughts, that the letter be circulated to the Board for review and comment. Mr. Randolph said that would be a Sunshine problem and if there were comments the Board wanted included, they should be voiced at this meeting. Mr. Ballentine said he would suggest that the minutes from this portion of the meeting be sent individually to each of the Council members to draw their attention to what the Board thinks is a serious problem in the community that is going to require action on the part of the

Council beyond what the Board is able to do. Mr. Hoffman asked what they would be asking the Council to do. Mr. Ballentine said it would be to address the situation and come up with an action plan to approach these particular problems, both where the property has been abandoned and where there is an individual in the home and nothing is being done and foreclosure is not an option. Mr. Hoffman said he would write the letter in consultation with Staff. There was additional discussion among the Board members on the motion.

**MOTION BY MR. BALLENTINE FOR THE BOARD TO DIRECT THE
CHAIRMAN TO WRITE A LETTER TO THE COUNCIL MEMBERS
BRINGING THE ISSUE OF PROBLEM PROPERTIES IN THE TOWN
TO THEIR ATTENTION
SECONDED BY MR. KOEPPEL
MOTION PASSED UNANIMOUSLY**

VIII. Adjournment: (4:19:59 p.m.)

The meeting was adjourned without benefit of motion.