

CODE ENFORCEMENT BOARD
Monday, October 20, 2008
Community Center, 509 Ocean Avenue
6:30 P.M.

MINUTES

I. CALL TO ORDER

Chairman Baird called to order the Public Hearing of the Town of Melbourne Beach Code Enforcement Board. Chairman Baird led the Pledge of Allegiance.

Members Present:

Others Present:

Chairman Charles Baird
Vice Chairman Warren Olin
Member Frank Cariou
Member K.M. Beckman
Member Martha Remark
Alternate Member Leon Snodgrass

Town Attorney Paul Gougelman
CEB Attorney Jocelyn Lowther
Building Official William Whitelock

II. APPROVAL OF MINUTES

There were no minutes to review. The last meeting was approximately June 2007.

III. NEW BUSINESS

A. Introduction of Jocelyn Lowther as Code Enforcement Attorney

Jocelyn Lowther introduced herself as the new Code Enforcement Attorney.

Attorney Lowther explained to the Board that they are the judge and jury but they can only rule on what is before them. They can ask questions and afterwards have discussion after motion has been made and then make a decision.

Attorney Lowther brought sample motions for the Board to review. She explained that if they were going to find someone to be in violation of a code they must always have finding of fact in motion. The decision to find somebody to be not in compliance has to be based on the finding of fact that you find here today when you presented the case.

Chairman Baird asked if anyone had any questions for Attorney Lowther.

Member Marty Remark asked if when you find someone in violation if a log is kept of the violation. She went on to give the example of if someone is in

violation of parking their RV for one week in front of their house, would you then send him a letter according to Town and State Statutes and notify him of the violation and tell him it must be moved within 48 hours?

Member Remark went on to inquire that if he moves it, would the Board know? Two weeks later it is sitting out there again, would he then be a repeat violator?

Attorney Paul Gougelman replied that if someone violates the code and charges are filed against them and then they come into compliance before the date of the Code Board hearing, the prosecutor can elect to either not proceed with the case, or bring it before the Board and ask that you find that he was in violation. The Board can then assess a fine. If the Board makes a finding that he was in violation and he violates again then he would be considered a repeat violator. Only the Board can define somebody as a repeat violator.

Attorney Gougelman stated that there are criteria that you have to consider in setting your fine.

- 1) Mitigative effort by the respondent
- 2) Gravity of the violation

Attorney Gougelman then stated that if the person is constantly violating and then coming into compliance that would apply.

Member Marty Remark stated that it was the past history of the Board to find someone in violation and then give them a couple of years to come into compliance. Her example was that someone has a house that is falling down and not in compliance and when they bought the house they were going to tear down the old house within three years and they didn't do it. The old house is still standing to this day and that's been 25 or 30 years ago.

Attorney Gougelman replied that the problem is that historically the Town has not been aggressive when it comes to code enforcement. Every community has its own standards as far as how forcefully they go with enforcing the codes, and the Town has not been interested in aggressively enforcing the codes. He went on to say that with Bill's efforts and bringing Jocelyn on Board, that policy may be changing somewhat. We may be trying to get compliance but in the past there was not really an effort towards that.

Attorney Lowther stated that is one of the reasons that the statute mentions daily fines of x amount per day and that is a huge incentive. It is not a flat fee fine, it is a daily fine.

Attorney Lowther went on to say that there are circumstances and every case will be different, where you just want compliance. For instance, if you have had a hearing and you have set an actual date to comply or you will assess a penalty of

\$25.00 a day and they have circumstances, maybe there is a legitimate reason they couldn't get it done in time. They are allowed to come back to and ask to make their explanation and ask you to reduce the fine. She stated that she has found it helpful in that situation to entertain a reduction as long as it gets paid in x amount of days. That is another incentive to get them to comply because collection is difficult.

A member asked if it is true that the Board can't put a lien on a property that has been homesteaded.

Attorney Lowther replied that you can put a lien on the property but you can't foreclose.

A member asked if you put a lien on the property if it would be apparent if the property changed hands.

Attorney Gougelman replied that if you prosecute against homesteaded property, most violators don't know that their homesteaded property can't have a lien put on it. They have no idea, they think it's a valid lien and most mortgage holders don't know that the lien is no good and therefore they may want to see it resolved and cleared as being the record. The other thing is that when you record a Code Board order in public records it becomes a lien on other property that the violator may own. If the violator owns an apartment building, for instance, there becomes a lien on that property. Attorney Gougelman went on to say that ultimately, if you really understand this process and you're dealing with a homeowner that's homesteaded and owns no other property the order is probably not going to be as effective and that makes it twice as hard in a town that is heavily residential like Melbourne Beach.

Member Marty Remark stated that she thinks that the Town residents usually just want the violation taken care of more than anything else.

A member asked if there were any such violations in the Town.

Building Official Whitelock replied that there certainly was.

A member asked if Bill wanted to tell them about it.

Attorney Gougelman replied that he can't without the violator being present.

Member Marty Remark stated that she has had people ask her to do something about different violations because she is on the Board. Member Remark stated that she isn't allowed to initiate the violation either. She asked if that was true.

Attorney Lowther replied that was correct.

Member Remark asked if a protesting citizen could withhold their name when making a complaint.

Building Official Whitelock replied that that they do not have to sign their name. He stated that most of his complaints come in anonymously.

Chairman Baird asked if there were any other issues.

B. Discussion regarding day of month for regular Code Enforcement Board meetings.

Attorney Gougelman stated that we need to set up a regular day every month.

Chairman Baird stated that we did this in May 2006 and we did it 2 times a year.

Attorney Gougelman replied that we are trying to schedule the same day every month.

Chairman Baird relied that the understanding would be that most of the time we would not meet so we'll leave it open.

Attorney Lowther stated that she got the understanding that the plan was to meet more regularly because someone is going out there monitoring.

Attorney Gougelman stated that what has been done for years in Indialantic is that all of the board members are aware that they meet, if they meet at all, the first Wednesday of every month. He went on to say that in reality that doesn't mean they meet every month. They might meet every other month or maybe once every three months. If there is no reason to meet, then why we are meeting but if there is a reason to meet, then everybody already knows and they have it blocked off on their calendars and that hopefully the first Thursday of every month will be the date.

Chairman Baird asked if everyone agreed to dedicate being available the first Thursday of every month.

Attorney Lowther asked if an agenda would be sent out a few days ahead of time so everyone would know there was a meeting.

Building Official Whitelock replied that he would like to see agendas go out at least one week prior to the meeting.

Attorney Gougelman stated that you could probably even do it a simpler way. He continued by saying that everybody knows that its going to be the first Thursday of every month and if there is a need for a meeting then you will receive an

agenda package and if you don't get an agenda packet then there will be no meeting.

Member Remark made a motion that we hold our regular meetings the first Thursday of every month at 6:30 pm at 507 Ocean Avenue, Melbourne Beach, Florida.

A member seconded the motion.

Chairman Baird moved that they call for a vote. Motion carried.

Building Official Whitelock informed the Board that there wouldn't be a meeting in November. The earliest meeting would be in December because of the way the statute reads and giving people notice.

Member Remark asked if the statute says how long you have to give them.

Building Official Whitelock answered that it depends on what the violation is. He said that for grass and weeds he'll give them a week and if it is a junk car then he'll give those 30 days.

Member Remark asked why he would give them so long.

Building Official Whitelock answered that sometimes it takes people time to arrange things to get moved.

Attorney Gougelman said that the goal of the statute is not to beat people up in the process. It's to try to work with the violator, which some people may criticize.

Building Official Whitelock stated that our goal is continued compliance and we are not achieving that goal right now, thus we have the board.

Attorney Gougelman stated that it is a tough process because there are a lot of people in the legislature and some people in the judicial branch that really perceive Code Enforcement Boards as being kangaroo courts. He said that in some communities that's probably true and that puts a greater responsibility on the Town administration and myself as the Town prosecutor to try to have a squeaky clean process and to bring you cases where we can tell you that we tried to work with the violator and we wouldn't be there before you unless we thought it was a particularly egregious matter. We don't want to have the appearance of a kangaroo court; we want you to have the appearance of being a good, quality judicial operation.

Attorney Lowther stated that she believes that's the other reason that requires you to have your own insurance, so that you are not answering to the City and you are

independent and that your decisions aren't the City's decisions, they are your decisions.

Chairman Baird asked if there was any other business.

Member Remark made a motion to adjourn. Another member seconded the motion. Question called; motion passed unanimously.

Rhonda Danielle, Deputy Town Clerk
(Town Seal)

Chairman Charles Baird