

CODE ENFORCEMENT BOARD

Thursday, October 13, 2011
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. The meeting was called to order at 6:34 pm.

Chairman Baird led the Pledge of Allegiance.

A roll call was taken and the following members were present:

Members Present:

Chairman Baird
Member O'Brien
Member Schaefer

Others Present:

Town Attorney Paul Gougelman
Board Attorney Jocelyn Lowther
Town Manager Bill Hoskovec
Building Official Robert Phoenix
Deputy Town Clerk Jennifer Howland
Kathy Jo Pearson

Absent:

Member K.M Beckman

Chairman Baird asked if a quorum was seated to have a meeting. The Clerk answered yes there was a quorum and they could conduct business at this meeting.

II. APPROVAL OF MINUTES FOR SEPTEMBER 9, 2011

Member Schaefer stated that there was an error in the acceptance of the minutes of September 3, 2009. The vote should have been 3-1 with Member Schaefer abstaining as she was not on the Code Enforcement Board at that time. She also stated that there was a Scribner's error in the minutes and that the word bought was used in the 2nd paragraph under section C of the minutes instead of the word brought. Member Schaefer made a motion to accept the minutes and Member O'Brien seconded the motion. Question called; motion carried 3-0.

III. PRELIMINARY MATTERS

A. Swearing in of witnesses

Attorney Gougelman wanted to add for the record that he is a notary public.

IV. VIOLATION HEARINGS

1. Case Number: **11-CE-001**
Alleged Violator: Mr. Schweitzer, Todd
Violation Address: 203 Surf Ave
Melbourne Beach, Florida 32951
Address: 3201 W Bay Villa Ave Tampa FL

Alleged Violation: Section 4A-2 of Article II, Chapter 4, of the Land Development Code in the town of Melbourne Beach Code of Ordinances.

Attorney Gougelman said that this case was being dismissed at this time as the Town and defendant had reached a resolution to the violation. If the violation appears again the Town will seek assistance from the Board to resolve the violation.

2. Case Number: **11-CE-002**
Alleged Violator: Mr. Pierini, Louis J Jr
Violation Address: 512 Andrews Dr
Melbourne Beach, Florida 32951
Address: 512 Andrews Dr
Melbourne Beach, Florida 32951

Alleged Violation: Section 4A-2 of Article II, Chapter 4, of the Land Development Code in the Town of Melbourne Beach Code of Ordinances.

Attorney Gougelman asked Officer Steven Kino to step forward. He then swore in witness Steven Kino, Police Officer for the Town Melbourne Beach.

Attorney Gougelman asked that Exhibit #4 – Letter from Code Enforcement Officer Robert Phoenix and the Notice to Appear be accepted into evidence. He asked that Exhibit #3 – Notice to Appear be accepted into Evidence also. Attorney Gougelman asked Office Kino if he had seen Exhibit #3 before. He stated that he did not recognize the notice as he was given a sealed envelope that he did not open.

Attorney Gougelman asked Officer Kino if he contacted Mr. Pierini. Office Kino answered yes he contacted Mr. Pierini and served him at 512 Andrews Drive with a sealed envelope which was given to him.

Attorney Gougelman asked Officer Kino if he was told what was in the envelope. Office Kino answered no he was not told. Attorney Gougelman asked who gave him the envelope. Officer Kino answered that his supervisor Sargent Rick Doval had given it to him. Attorney Gougelman asked if he knew where the Sargent got the envelope from. Officer Kino answered that he believed that he received it from the Chief of Police. Attorney Gougelman stated that he had no further questions for this witness and excused him.

Attorney Gougelman swore in witness Robert J. Phoenix, Code Enforcement Officer for Melbourne Beach.

The next witness was Mr. Robert J. Phoenix. Attorney Gougelman asked that Exhibit #1 be placed into evidence. Attorney Gougelman asked Mr. Phoenix to identify Exhibit #1. Mr. Phoenix answered that it was a list of his credentials that included his education, certifications and licensing as well as his International Code Council Certifications and experience.

Attorney Gougelman asked Mr. Phoenix to explain to the Board his Education and certifications and Licensing.

Mr. Phoenix answered that his formal education included an Associate's Degree in Public Administration from Hartford College and formal code education consisting of 6 months with the Connecticut Department of Public Safety. This time was to obtain his Fire Marshal Certification. After moving to Florida he received his certifications from the International Code Council. The certifications that he received are Certified Building Code Official, Certified Building Official, Certified Commercial Mechanical Inspector, Certified Commercial Plumbing Inspector, Certified Commercial Building Inspector, Certified Commercial Plans Examiner and Certified Residential Building Inspector. These certificates give him the designation of a Certified Building Code Official. This is a designation by the International Code Council that makes him an expert in building codes. Mr. Phoenix stated that after receiving those Certifications he applied and became a Florida Licensed Building Code Administrator, a Florida Licensed Commercial Building Inspector a Florida Licensed Commercial Plans Examiner, a Florida Certified Storm Water Inspector and a Florida DEP Storm-water Trainer. Attorney Gougelman asked Mr. Phoenix to go over his experience. Mr. Phoenix answered that from 2010 through present day he has worked for the Town of Melbourne Beach as the Building/Code Enforcement Officer. Previous to that he worked for Independent Inspections Services Inc. from 2008-2010 as a Building Official and Contract Building Department Administrator. He worked for the City of Lake Worth from 2007-2008 also as a Building Official. Before that he worked for the Village of North Palm Beach from 2005-2007 as Deputy Building Official/ Code

Compliance Supervisor. Before that he worked for the City of Fort Pierce from 2003-2005 as a Deputy Building Official/ Building Official and State of CT Department of Mental Retardation and Developmental Disabilities from 1988-2003 as a Fire and Life Safety Inspector/Construction Coordinator for over 500 group homes.

Attorney Gougelman asked if Mr. Phoenix had reviewed Exhibit #1 of his education which included certifications and licensing for the State of Florida and the International Code Council. He asked if this was a true representation of his curriculum.

Mr. Phoenix answered that it was.

Attorney Gougelman asked to have Mr. Phoenix admitted as an expert in Building Inspection and Code Enforcement

Member Schaefer moved that Mr. Phoenix be accepted as an expert witness. Member O'Brien seconded the motion. The question was called. The vote was 3-0. The motion carried unanimously.

Attorney Gougelman presented Exhibit #2 and asked Mr. Phoenix to identify it.

Mr. Phoenix identified Exhibit #2 as the initial notice of violation sent to 512 Andrews Drive in regards to a structure that was erected without the benefit of permits or inspections.

Attorney Gougelman asked Mr. Phoenix to look at page 3 of Exhibit #2 the mail receipt and the green card and asked if he prepared them.

Mr. Phoenix answered that he had.

Attorney Gougelman asked who signed for the letter.

Mr. Phoenix answered it looked like S. Pierini signed for it on April 21, 2011.

Attorney Gougelman asked if it could it be L Pierini.

Mr. Phoenix answered yes it could be.

Attorney Gougelman asked what the basic purpose of the Notice was.

Mr. Phoenix answered that it was noted that a structure was erected without permits.

Attorney Gougelman asked at what address that was that.

Mr. Phoenix answered 512 Andrews Drive in Melbourne Beach, Florida.

Attorney Gougelman asked if Mr. Phoenix knew who the owner was of the property.

Mr. Phoenix answered that upon doing a property search he was able to identify that Louis J Pierini Jr. owned the property.

Attorney Gougelman asked when the notice was mailed.

Mr. Phoenix answered that the notice left the office on April 19, 2011 and was delivered on April 21, 2011.

Attorney Gougelman asked if that was when you gave Mr. Pierini formal notice of this problem.

Mr. Phoenix answered yes.

Attorney Gougelman asked if Mr. Phoenix had spoken with Mr. Pierini in regards to this problem.

Mr. Phoenix answered that he had not.

Attorney Gougelman asked for Mr. Phoenix to identify Exhibit #3 which was the Notice to Appear dated for a meeting originally scheduled for October 6, 2011. Mr. Phoenix was asked to authenticate the Exhibit.

Mr. Phoenix answered that this is a Notice to Appear based on the Violation Notice prior. Promulgated by him and sent via certified mail and with return receipt requested.

Attorney Gougelman asked if the green card was proof of this.

Mr. Phoenix answered it was.

Attorney Gougelman asked who it was signed by.

Mr. Phoenix answered that it appeared to be signed by Sandra Pierini.

Attorney Gougelman asked what the upshot of this was.

Mr. Phoenix answered that it was for the structure that was built without a permit.

Attorney Gougelman asked that Mr. Phoenix authenticate the re-notice which was Exhibit #4.

Mr. Phoenix looked at Exhibit #4. He said this was a cover letter to clarify that this was not a new notice but a renote based on a typographical error.

Attorney Gougelman asked what the upshot of this notice was.

Mr. Phoenix answered that it was basically the same notice as the prior notice but with the code citation corrected.

Attorney Gougelman asked if this was the property previously testified to as being owned by Mr. Pierini.

Mr. Phoenix answered yes.

Attorney Gougelman asked Mr. Phoenix if the notice was given to the Police to serve.

Mr. Phoenix answered that he had given this notice to the Police Chief and asked him to assign it to his duty officer. The duty Officer delegated the serving of the notice to Officer Steven Kino on October 5th 2011.

Attorney Gougelman then asked for Exhibit #5 to be entered into evidence which was unmarked photos.

Mr. Phoenix identified the photos as photos taken on April 15, 2011. The first photo is of a doorway with a number sign indicating 512 Andrews Drive. The second picture is a snip sign that was in the ground adjacent to the property of 512 Andrews Drive. This indicated that Tiki Mike had built a structure at 512 Andrews Drive. The third photo is of the roof of the accessory structure that had been built and a fence that had been installed around the structure. Photo 4 was a wide view of the subject property 512 Andrews Drive and its proximity to the accessory structure. The last photo was of the rear property line of the subject property at 512 Andrews Drive, showing the fence and the rooftop of the accessory structure.

Attorney Gougelman asked for Mr. Phoenix to look at the last picture and to identify the tiki structure.

Mr. Phoenix answered yes that was the tiki structure located at 512 Andrews Drive.

Attorney Gougelman asked who took those photos.

Mr. Phoenix answered that he took those photos on April 15th 2011.

Attorney Gougelman asked if he remembered what time the photos were taken.

Mr. Phoenix answered between 1:55 pm and 2:00 pm.

Attorney Gougelman asked about the significance of the tiki structure as it relates to the case.

Mr. Phoenix answered that the structure is encroaching on the side and rear setbacks in contrast to the Ordinance for the zoning district.

Attorney Gougelman asked if this structure built with a permit.

Mr. Phoenix answered no.

Attorney Gougelman asked if this was in violation of any of the Town Ordinances.

Mr. Phoenix answered yes. It violates Ordinance number 4A-21 of the Town Ordinance which adopts the Florida Building Code and the Florida Building Code requires permits.

Attorney Gougelman asked if this was a violation that was cited in the Notice to Appear in Exhibit #4.

Mr. Phoenix answered it was.

Attorney Gougelman asked if this is the subject of all the exhibits for this case.

Mr. Phoenix answered it was.

Attorney Gougelman asked if it was his testimony that this is a violation of the code.

Mr. Phoenix answered yes it is.

Attorney Gougelman submitted to the Board that the Town has met its Prima Fascia Case. Normally the Town would ask the Board to find the respondent in violation of the Ordinance and to assess a fine. The Town has had meetings with the respondent's legal representative. Attorney Gougelman recommended that the Board find that Mr. Pierini violated the code by constructing a building. He stated they are not seeking a fine on the respondent. He asked that the Board enter an order to give the respondent the opportunity to come into compliance in a couple of different ways. If he does not come into compliance by the date ordered then a charge of \$50.00 a day is assessed until the respondent comes into compliance.

Attorney Gougelman asked Mr. Phoenix if Mr. Pierini had to get a variance to come into compliance and be able to get a permit after the fact for the tiki hut structure.

Mr. Phoenix answered yes he would need a variance.

Attorney Gougelman asked if the respondent has applied for that variance.

Mr. Phoenix answered that he had.

Attorney Gougelman asked if Mr. Phoenix knew when the request for the variance was going to be heard by the Board of Adjustment.

Mr. Phoenix answered that he believed that the variance would be heard on October 20th 2011.

Attorney Gougelman stated that the Board of Adjustment does not have to enter an order on that day and they can enter a continuance. However, the respondent has taken the steps to come into compliance and based on that the Town is not seeking a fine. The Town proposes that once the Board of Adjustment enters their judgment either granting or rejecting the variance, that Mr. Pierini have 60 days to come into compliance. There are two ways to comply. One way to come into compliance is if the board rejects the variance then Mr. Prieni would have to demolish the tiki structure. If the Variance is granted then the respondent could be issued an after the fact building permit by paying the permit fees, and coming into compliance. Attorney Gougelman stated they would suggest giving him 60 days from the Board of Adjustments final ruling on the request for a variance. If he has neither, then the Town requests that the fine be \$50.00 a day from the Board of Adjustment meeting.

Attorney Tino Gonzalez for the respondent stated that he has had conversations with Attorney Gougelman and Mr. Phoenix concerning this matter. His client hired Tiki Mike in good faith to build a structure adjacent to his pool because his screen structure was damaged after the hurricanes of 2004. Tiki Mike thought that the contractor was licensed and he did not realize that his license was suspended due to a child support issue, which was resolved once he found out about it within a matter of two days. Attorney Gonzalez stated that they have been working diligently to resolve this matter with the Board of Adjustment. Attorney Gonzalez is asking that the board go along with Attorney Gougelman's recommendation giving the respondent the opportunity to appear before the Board of Adjustment to have his request for a variance heard.

Attorney Gougelman asked Attorney Gonzalez if he agreed that his client violated the Ordinance not by intentions but still violated Ordinance 4A-21.

Attorney Gonzalez answered yes we do admit that.

Attorney Jocelyn Lowther asked if the respondent was on the agenda for the Board of Adjustment meeting scheduled for October 20th 2011.

Attorney Gonzalez answered that they were.

Chairperson Baird asked if the Town was looking for a motion what we would recommend that we find Mr. Pierini violated the code by constructing building. We do not want to seek a fine the respondent. Attorney Gougelman answered we want the Board to enter an order to give the respondent the opportunity to come into compliance in a couple of different ways. We would like to give him 60 days from the Board of Adjustments final ruling on the request for a Variance. If he has neither, then we request that the fine be \$50.00 a day from the Board of Adjustment meeting.

Chairman Baird asked if neither were done if the Board should charge \$50.00 a day until he was in compliance.

Attorney Gougelman answered yes, if the Respondent did nothing then the \$50.00 a day would incur as of the 21st of October

Chairman Baird asked if it was the Respondent's responsibility to come back to the Town and prove that he is in compliance.

Attorney Gougelman yes that the Respondent would come back and submit evidence that he has complied with the order.

Member Schaefer asked if the wording would be strong enough to go to the Board of Adjustment for the requirement.

Attorney Gougelman stated that if the Respondent forgoes the Board of Adjustment meeting then the 60 days would start and the structure would have to be demolished within 60 days of the Board of Adjustment meeting. He said that should be included in the order.

Member Schaefer asked if the Respondent had to go before the Board of Adjustment.

Attorney Gougelman stated the Board of Adjustment meeting is a requirement unless the respondent chooses not to show up or withdraws his request. He stated that at that point the sixty days would begin.

Member Schafer made a motion to accept the Town's recommendation.

Chairman Baird seconded.

Chairman Baird called the question.

Motion carried 2-1

V. TOWN ATTORNEY MATTERS
None

VII. OLD BUSINESS
None

VIII. NEW BUSINESS
None

IX. ADJOURNMENT

Member Schaefer called for a motion to adjourn. Member O'Brien seconded the motion. Question called; motion carried 3-0.

Kathy Jo Pearson
(Town Seal)

Chairman Chuck Baird