

CODE ENFORCEMENT BOARD
CITY COMMISSION MEETING ROOM
100 NORTH ANDREWS AVENUE
August 21, 2009
9:00 A.M. – 11:50 A.M.

Board Members

Attendance

Sam Mitchell, Chair
Genia Ellis, Vice Chair
Margaret Croxton
Joan Hinton
Howard Nelson
Ronald Perkins
Jan Sheppard

Howard Elfman [Alternate]
Chad Thilborger [Alternate]

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Staff Present

Dee Paris, Administrative Aide
Ginger Wald, Assistant City Attorney
Glynis Burney, Legal Secretary
Valerie Bohlander, Director, Building Department
Brian McKelligett, Clerk /Special Magistrate Supervisor
Deb Maxey, Clerk III
Yvette Ketor, Secretary, Code Enforcement Board
Lindwell Bradley, Code Enforcement Supervisor
George Oliva, Building Inspector
Gerry Smilen, Building Inspector
Deborah Hernandez, Code Enforcement Assistant Manager
Skip Margerum, Code Enforcement Supervisor
Mike Maloney, Code Enforcement Manager
Chris Augustin, Building Official
J. Opperlee, Recording Secretary

Chair Mitchell called the meeting to order at 9:04 a.m.

Mr. McKelligett distributed a packet of materials to Board members.

Attendees introduced themselves in turn.

Mr. Maloney thanked the Board for serving, and noted that they and City staff had the same goals: to keep properties up to standards and safe. Mr. Maloney wanted to work with the Board toward those goals and to make the hearing process more efficient and less costly. Mr. Maloney read from Code Section 11 that described the Code Enforcement system that would "provide an equitable, expeditious, efficient and effective method for enforcement."

Mr. Maloney remarked that the staff did a great job and they were very taxed at this time with the number of cases they handled. He believed they must consider new ways of doing things that would serve the citizens better and ultimately get compliance sooner.

Mr. McKelligett referred to the packet he had distributed and noted the meeting change recently instituted to split the cases to hear the old business and hearings to impose fines in the morning and the new business cases in the afternoon. He noted that this procedure seemed to flow well and saved respondents' waiting time. Board members agreed.

The Board had been provided with a summary of Robert's Rules of Order, and Mr. McKelligett said this was how the Board should be governed. He encouraged the Board to utilize the prepared language when stating their orders because these had been crafted this specific way for legal reasons.

Ms. Wald stated the City Commission had not adopted Robert's Rules of Order, but they did follow the main parts regarding making motions, friendly amendments and discussion. She stated the Chair was responsible to control discussion and request motions from Board members, and was also able to make motions. Ms. Wald had noted a problem with Board members indicating they wanted to be recognized, and stated it was the Chair's responsibility to make sure each Board member was heard and to ensure that discussion stayed on topic. It was up to the Chair to decide how Board members should indicate they wished to be recognized to speak. Ms. Wald noted how important it was for just one person to be speaking at a time, and asked Board members to not talk over others, and to wait to be recognized. She suggested they discuss what method would be used to recognize Board members.

Ms. Croxton recommended they utilize the light system when a Board member wanted to speak, and noted that the City Commission used this and it seemed to work well. Chair Mitchell believed the manner they used to be recognized was up to the Chair. He felt that the light system could be a distraction to the person controlling the meeting, and it was easier for him to pay attention to the person currently speaking and to respond to a verbal request to speak.

Chair Mitchell stated he was disturbed by the "chatter" that went on and said he did not interrupt speakers because he did not want to be abrasive to Board members by cutting them off. He had also noted that at times, Board members engaged in "continuous rambling" and "repetition." He stated he had some suggestions to move cases along faster.

Mr. Nelson agreed that they should use the method easiest for the Chair to recognize Board members who wished to speak. He reminded everyone that after cases were past them, judges looked at the record of what was said, so their record should be clear, should apply the correct law, and ensure due process. They should make a fair and just decision that would be sustainable on appeal. Chair Mitchell noted that the Board

Attorney counseled the Board to point out any corrections necessary, but Mr. Nelson stated, "There's nothing Bruce can fix once it comes out of our mouth."

Chair Mitchell said he would like the Board members to memorize all of the prepared language for making motions.

Ms. Wald cautioned Board members never to speak about the cases among themselves; if they had a question, they should ask the Board Attorney on the record. She reminded the Board that theirs was an open meeting, and everything they said related to the case must be stated on the record.

Mr. McKelligett explained that the reason they had devised the motion language was to ensure that when a case was reviewed, there would be no question about the finding of fact, the amount of time allowed, the fine amount or the imposition of fines.

Mr. Nelson admitted he could not remember all of the motion language and must read it to make sure it was accurate. He believed Board members should never talk among themselves because someone could infer that they were discussing a case.

Mr. Maloney remarked that there could be a lot of redundancy and cases that went on for long periods of time, and a Chair who could determine when there had been sufficient pertinent discussion speeded the process tremendously.

Mr. McKelligett clarified that when the respondent was giving testimony, any Board member could question the respondent. Per Robert's Rules, each Board member was permitted to ask just one question in turn. Until each Board member was given the opportunity to ask one question, the first Board member could not ask another. Once a motion was made, discussion must wait until the motion was seconded. After the motion was seconded, there would be general discussion. Once the Chair stopped the general discussion, a vote was taken and there should be no further discussion or comments on the case.

Mr. McKelligett drew the Board's attention to the fine recommendation sheet, which was included in the Boards packet, and explained this was meant to address administrative costs. They had calculated a case cost of \$83 per hearing and a property inspection cost of \$46. Mr. McKelligett believed the City should recover some of its costs to bring the cases.

Mr. Nelson noted that different municipalities had different methods for handling fine reduction requests. Mr. Nelson suggested Fort Lauderdale consider a method that would reduce, but not eliminate, most fines. He felt the Board's practice of completely abating fines resulted in respondents having a "very leisurely" attitude toward compliance.

Ms. Ellis said it was not the case that fines were "arbitrarily always forgiven." She stated she had a problem with applying an administrative fee, because staff were "direct

charge people” and this would amount to a penalty as opposed to an administrative fee. Ms. Ellis did not want to deviate dramatically from how the Board was currently handling fines, noting there was an appeal process available. Mr. Nelson said he wanted respondents to at least state their cases for requesting abatement.

Chair Mitchell recalled asking staff how long a case had been going on and what efforts staff had put into a case. When deciding how to vote, Chair Mitchell said he considered whether the respondent had purchased the property with the violations or had caused the violations himself. Chair Mitchell stated it was not often people appeared before the Board and indicated they were unaware they needed permits. He felt people knew permits were required and chose to violate the rules. In the case of a property purchased with violations, Chair Mitchell felt they might give some consideration to a fine reduction, but he was “not too much willing” to reduce the fine in the case of a person who had done work without a permit.

Supervisor Bradley described how cases were developed. When Code inspectors noted work going on in their territories, they determined whether a permit had been issued. If not, an inspection report was issued instructing the owner to stop work and apply for a permit. For larger projects, Supervisor Bradley would visit the property with a building inspector, who would put a stop work order on the property. The code inspector monitored the case for 60 to 90 days, and tried to get in touch with the owner. If no contact was made, the building inspector revisited the property and usually issued a detailed inspection report. At this point, the process was probably 120 days along. If there was still no progress, the building inspector sent out a final notice, which mirrored the Notice of Violation, summoning the respondent to appear before the Code Enforcement Board. Mr. Maloney mentioned that there were people who complied at some point in the process; those summoned to appear were those who ignored the notices.

Mr. Nelson stated some of the respondents had bought a house that a prior owner had modified. He noted that the property must still be complied; the owner’s remedy was with the person who had sold him the house. Mr. Maloney stressed that this was the Board’s job: to judge whether the evidence proved a violation existed.

Mr. McKelligett said as long as the current owner recognized that a problem was present and took steps to remedy it, however slowly, the City would work with him. If progress stopped or the owner denied responsibility, the case was scheduled for the Code Enforcement Board.

Mr. McKelligett described a scenario the Board sometimes saw when an owner who was making efforts and had been granted extensions missed a hearing and fines accrued during that time. When the property was complied, the Board may want to consider imposing administrative costs only. In cases when an owner had been recalcitrant, the Board should consider an appropriate percentage of accrued fines to impose. In the case of an owner who had made a good effort to comply, the Board could choose to completely abate the fines.

Ms. Wald read from Chapter 11, which set forth what the Board's order *may* include: the date by which the violation must be corrected and the daily fine which may be imposed for non-compliance. An additional fine may be imposed for the costs to the City to correct the violation and administrative costs. The Chapter also stated that when determining the daily fines, the following factors should be considered: the gravity of the violation; actions taken by the violator to correct the violation and any previous violations committed by the violator.

Ms. Wald confirmed for Chair Mitchell that the Board could question the property owner and/or the City regarding previous violations. Chair Mitchell noted that previous violations had nothing to do with the current violation. Ms. Wald agreed that prejudice should be avoided and the Board should make a finding of fact prior to asking about prior violations.

Mr. Nelson stated the list of things the Board "shall" consider when setting the fine was a "minimum list" and the Board could consider other factors such as economic benefit, life safety risks and respondents' economic issues.

Chair Mitchell requested that all Board members be provided with copies of Chapter 11.

Ms. Wald explained what types of cases were heard by Special Magistrate as opposed to those heard by the Code Enforcement Board.

Supervisor Bradley explained that when inspectors made recommendations regarding how much time should be given to comply or fine amount, they took into consideration many factors of which they were aware in order to make appropriate suggestions. Mr. Maloney pointed out that it tied the City up administratively when they had continued hearings on the same property. He asked Board members to trust the inspectors' suggestions for compliance deadlines. Supervisor Hernandez asked Board members to trust that inspectors' recommendations were appropriate and needed for compliance.

Inspector Smilen stated the inspectors monitored the cases and made their recommendations based upon that. He pointed out there was no sense in the Board's monitoring the case when the inspectors were already doing this. Ms. Croxton said she was frustrated when inspectors made recommendations and the Board brought respondents back sooner; she felt the Board was micromanaging the cases. She trusted the inspectors' recommendations and wanted to have a very good reason why the Board should deviate from them.

Ms. Ellis said as a rule, the Board took staff's recommendations. She said when they called cases back in 30 days it was so they could "enforce something a little stronger because you're not getting compliance." Chair Mitchell pointed out that in the past, people had signed stipulated agreements as a way to play games with the Board. He had begun to challenge respondents who had signed stipulated agreements but not complied by the stipulated date and the Board had seen a decline in the number of

stipulated agreements. When the Board recalled a case sooner, Chair Mitchell said it was to see that the respondent was doing something. Mr. McKelligett observed that there had been a marked increase in the number of hearings to impose fines presented to them to give them the option to impose fines sooner. They could decide to grant an extension if they chose. Mr. Maloney wondered why the Board would consider an extension after the time for a stipulated agreement had expired. Mr. Maloney reiterated that the additional hearings were bogging Code Enforcement down.

Mr. McKelligett informed the Board that staff spent a tremendous amount of time researching property ownership. In foreclosure cases, they notified the bank and the bank's attorney. They sent notices for hearings to impose fines specifically stating that fines could be imposed.

Ms. Wald explained that owners could have lien settlement discussions with staff after properties were complied, and any settlement amounts over \$5,000 must be approved by the City Commission. Once the lien was paid, the owners received a release of lien. Ms. Wald noted that the owners often did not pay the lien and it stayed on the property. The City Attorney's office also had the option to foreclose on a property. This could not be done on a property that was already in foreclosure or that was homesteaded.

Ms. Croxton wanted a method the Board could use to determine sustainable, reasonable fine amounts. Ms. Wald noted that each case was different and the Board must consider each case on its own. Mr. Nelson stated he intended to ask respondents what their reasons were for requesting fine reduction, and he would oppose reductions that had no basis. Mr. Maloney cautioned the Board about imposing heavy fines, and suggested they consider setting a realistic fine amount.

Mr. McKelligett explained that usually, the party engaged in the lien discussion was a prospective owner, a new owner or a bank that had just taken possession of a property. He said new owners who complied the property were considered the solution, not the problem, so the figure the City suggested for lien settlement was "punitive to the case but does not conflict with their ability to purchase a home." The City's goal was for these homes to be purchased and occupied so the taxes were paid.

In the case of owners who had fines imposed against them, staff informed them that they would not rehear the case, and they were reluctant to reduce the liens. Staff considered many factors in the lien settlement discussions: neighborhood impact and the fine total compared to the value of the property. He remarked that if the fines were excessive, they would never be paid, the problem would never be taken care of and the property would never be occupied.

Ms. Wald advised Board members that the inspectors made recommendations and the owners requested abatement and it was up to the Board to weigh all of the factors and figure out an appropriate fine for each case.

[The participants took a break from 10:36 to 10:45]

Mr. McKelligett stated in the case of an owner who missed a hearing but then was granted extensions, it was staff's feeling that if the owner had not missed that meeting, an extension would have been granted and the fines would not have accrued, and in these cases, they asked the Board to amend the order to cover the period during which the fines had accrued. When staff did not ask the Board to amend the order, the inspector would recommend that no fines be imposed.

Supervisor Hernandez wanted the Board to be aware of the magnitude of cases staff could not bring to the Board because the agendas were so bogged down with repeating old business cases being brought back to the Board for progress reports. She stated there were literally thousands of cases backlogged.

Supervisor Hernandez said there was a new 40-year inspection plan for which they had 200 properties ready to be presented to the Board. They also had two building inspectors dedicated to expired permits that now amounted to 5,000 cases. The Board had seen none of these cases because the agendas were too full. Staff appreciated the fact that the Board wanted to impress upon respondents that they were on top of the cases, but she wanted the Board to understand that the reason inspectors suggested longer periods of time because there were so many other cases the inspectors wanted to bring to the Board. She asked the Board to allow staff to perform case management for 180 days, and when the respondents reappeared with properties that were still not complied, the Board could choose to impose fines.

Chair Mitchell thought the City should consider a second monthly meeting. Mr. Nelson asked staff to estimate how long it would take to handle the backlog if two meetings per month were held. Mr. McKelligett felt it would take four or five months, but suggested they hold two meetings per month every other month. Chair Mitchell suggested they get the cases to the Code Board to relieve the City's burden. Mr. McKelligett remarked on the hours of staff time that were required to present each case. Ms. Croxton felt they had received some good suggestions from staff for ways to expedite cases and stop micromanaging, and make it easier for staff, and they should try some of these suggestions to streamline meetings first.

Chair Mitchell asked why the Board did not meet in December. Ms. Paris said it was because the hearing date usually coincided with the Christmas holiday. Ms. Wald reminded the Board that a quorum was required, and Mr. McKelligett said the reason they had stopped having a December meeting was because Board members were gone.

Ms. Ellis said the reason the Board had begun recalling cases more often was because there had been a marked increase in the number of people "not complying on purpose." Inspector Smilen said the Board should impose the fines sooner instead of extending the cases. Mr. McKelligett said he would like the Board to indicate in their motions that no more extensions would be granted before a fine was imposed. Mr. Nelson stated he wanted to give respondents direction that would move them toward compliance, since that was the goal. Mr. Maloney said he believed the Board's role was to determine

whether the violation existed and then set an amount of time to comply, not to hear progress reports; that was staff's job.

Mr. Augustin informed the Board that there was a one-day permit walk-through process owners could use for permits requiring approval from just one discipline. Current plan review time for larger projects was two weeks. He said there were times that plans were picked up for corrections and not returned for months. Mr. Augustin explained that plans requiring review by multiple disciplines were assigned to the siting inspector, who reviewed the plans to ensure that all issues were addressed. If all issues were not addressed, the plans were immediately kicked back.

Chair Mitchell did not feel the Board was micromanaging cases. When they brought cases back, it was because they did not believe what a respondent was saying. Mr. Maloney said in these cases, they should follow up with a Massey hearing, not just a progress report. Chair Mitchell said he was somewhat in favor of following the City's recommendations, but it was his decision.

Mr. Nelson said sometimes, when they were waiting for a product approval, staff would process plan sets that allowed an owner to comply some of the violations; they did not kick back the plans. Mr. Augustin explained that the code inspectors looked at the plans, not product approvals; the building plans examiner looked for product approvals

Ms. Wald informed the Board that the Massey case was a 2004 case that dealt with due process. She said the most important thing to her was that the owner who came before any board had the notice and the opportunity to be heard. The Massey case stated that the owner must have notice and opportunity to be heard before fines were imposed. It did not say there must be a hearing. Ms. Wald said the City had been involved in a Federal lawsuit, and part of the settlement was that they would have hearings to impose fines [Massey hearings]. This required the owner to be noticed and to be provided the opportunity to be heard. Supervisor Bradley stressed that this was not a time to rehear the case.

Ms. Wald stated she was sure staff put no cases on the agenda that had not received proper notice. Mr. McKelligett said staff sometimes reviewed old orders, and if there was a question of notice, they asked for the orders to be vacated and the case to be re-heard.

Regarding foreclosure cases, Ms. Wald informed the Board that pursuant to Chapter 11, the City must bring the case against the title owner of the property, which they identified by the property appraisers' records. She advised the Board not to concern itself with whether or not a case was in foreclosure. Their focus should stay on whether the owner was going to comply the property. Ms. Wald stated fines were imposed against the owner, and the lien remained against the owner and any other property he owned. If the lien was recorded after the lis pendens, the lien was outside the chain of title, and after the property went through the foreclosure process and was sold, the lien no longer attached to the property. If the foreclosure went away, the lien stayed on the property.

She reiterated that the Board should not be concerned about this, since it was not what they should be taking into consideration.

Ms. Wald explained to Mr. Thilborger that when a case was begun against an owner and a foreclosure sale occurred, both the owner and the bank would be noticed of the hearing, and even though the bank was now the owner, the fine would go against the owner and any property he owned, and the property that the bank now owned. This was why Mr. McKelligett had begun sending notices to banks when there was a Code Enforcement problem.

Ms. Wald stated when bank attorneys stated they could not enter the property to perform repairs, they were lying; the mortgage granted them this right and they could go to a court and request permission to enter the property to make repairs. The Board could not order the bank to make repairs.

Chair Mitchell asked if the Board could ask an owner to have a Massey hearing to conclude cases that involved foreclosure. Ms. Wald said the only time the Board could ask the owner to waive notice of a Massey hearing was when a property was complied but the case had not been noticed for a Massey hearing. It did not matter if the case was in foreclosure.

Ms. Wald explained to Mr. Thilborger that once a foreclosure action happened, the Code Enforcement case was closed, the fines ceased accruing against the former owner, but the lien stayed against him. A new code enforcement case could be opened against the new owner.

In the case of banks that owned properties with liens, Ms. Wald explained that when they tried to sell another property, the lien would show up and the bank might request a partial release of lien to be allowed to sell that property only. The City could grant the release of lien, or could choose not to. Currently, the City was not granting releases, and was requiring banks to bring any and all properties in the City into compliance and then enter into lien negotiations. This could take months, and by the time it happened, Ms. Wald said the property would be in compliance and the bank would make the payments for it.

Mr. Augustin reported there was an exception in State statute to allow a homeowner to act as his own contractor, provided the building was a single-family house or a two-family dwelling and the home was for the owner's use. The owner could also not sell the home for one year after the permit was closed. The City now honored this exception to streamline the process.

Ms. Bohlander thanked the Board for their service and their expertise. She felt this had been an opportunity for staff and the Board to communicate and she felt there had been a good exchange of ideas. She thanked staff for their work as well.

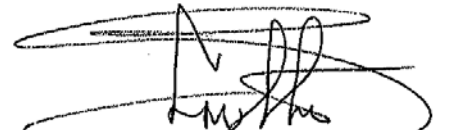
Ms. Sheppard asked that the agenda list what type of properties the cases were against.

Ms. Hinton thought they had not reached consensus regarding holding additional meeting. Chair Mitchell thought Board members would be there if needed.

Chair Mitchell thanked Board members for their service and for arriving on time. He asked to meet with Board members after the meeting to resolve an issue. Ms. Wald reminded Chair Mitchell that this must be done on the record. Chair Mitchell said there appeared to be some friction between Ms. Croxton and other Board members and he wanted this to be fixed so the Board could work together. Ms. Croxton said she felt no friction; she felt the meetings could go much faster if the Board accepted staff recommendations instead of engaging in long debate and asking respondents to appear more often. Ms. Ellis said Board members should stick to the subject and not state personal opinions. They should also not make recommendations for contractors. Ms. Hinton said Board members should refrain from speaking out of turn.

Supervisor Bradley informed the Board that Inspector Strawn had retired and would be missed.

There being no further business to come before the Board, the workshop adjourned at **11:50 A.M.**



Chair, Code Enforcement Board

ATTEST:



Clerk, Code Enforcement Board

NOTE: The agenda associated with this meeting is incorporated into this record by reference.

Minutes prepared by: J. Opperlee, ProtoType Inc.