

**City of Fort Lauderdale
Nuisance Abatement Board Minutes
City Hall, City Commission Chambers, 1st Floor
100 North Andrews Avenue
Thursday, July 12, 2007 at 7:00 p.m.**

	Attendance	2007 Cumulative Attendance 3/07 to 2/08		Total Meetings
		<u>Present</u>	<u>Absent</u>	
<u>Members</u>				
Douglas Reynolds, Chair	P	3	1	4
Harry MacGrotty, Vice Chair	P	4	0	4
Caldwell Cooper	P	4	0	4
David C. Svetlick	A	3	1	4
Patricia Mayers	P	4	0	4
Laurie Watkins, Alternate	P	3	1	4

Staff Present

Marcia Gair, Board Clerk
Bruce Jolly, Board Attorney
Scott Walker, City Prosecutor
Sgt. John Eaves, Liaison
Travis Woods, Recording Clerk

1. **Call meeting to order; Pledge of Allegiance**
2. **Roll call; witnesses sign log; swearing in**
3. **Approval of minutes for May 10, 2007**

Motion made by Mr. Cooper, seconded by Ms. Mayers, to approve the minutes of the June 14, 2007 meeting. In a voice vote, the motion passed unanimously.

4. **Case Number 07-05-04, 715 Northwest 15 Terrace**
 - **Notice of Status Hearing**

Sgt. Eaves presented the update on the case. Sgt. Eaves stated he had visited the property and the owner is in compliance with the stipulation agreement. Sgt. Eaves indicated that the owner has filed the no trespassing affidavit and the no trespassing signs have been posted on the front and rear of the property. The lease addendum will be adopted for all new leases and renewals and the current tenants have signed the addendum. Sgt. Eaves reported that the problem tenant has vacated the property; the lights on the corners of the building have been installed and are operational; and the

owner has paid all the investigative costs. Sgt. Eaves stated that at this time the City was satisfied that all the stipulation agreement provisions have been met.

The property owner, Jean Sylvain, was present. Chair Reynolds thanked Mr. Sylvain for complying with the agreement and advised him that the Board retained jurisdiction until May 10, 2008.

5. Case Number 07-05-03, 201 West Sunrise Boulevard
• **Notice of Status Hearing**

The property owner was not present.

Sgt. Eaves presented the update on the case. Sgt. Eaves reported the no trespassing affidavit has been filed with the City and that five or six no trespassing signs have been posted. The security camera is in place on the east side of the building, but Sgt. Eaves stated he did not see the lights, but that may be due to a code requirement that the lights be placed a required distance from the roadway. Sgt. Eaves continued that the fence has been installed running along the north side of the building, and the east side of the building is blocked off. The west side is open to allow access to the rear of the building to service the machines but pedestrian access is limited. Sgt. Eaves stated that all of the required stipulation agreement provisions have been met except for the completion of the installation of the lights on the east side, but the owner has more time to complete that installation.

Mr. Walker stated that the property owner is having difficulty getting the permit for the lights but is continuing his efforts.

Chair Reynolds asked if there had been any subsequent calls to the property. Sgt. Eaves indicated that from June 14th to July 11th there have been eight calls but none resulted in any complaints.

Mr. Walker requested that the property owner be required to come before the Board in August to provide a status report. Chair Reynolds confirmed that the owner shall be required to attend the August 9th meeting for a status hearing.

6. Case Number 07-06-05, 800 Northwest 10 Terrace
• **Notice of Evidentiary Hearing**

Mr. Walker stated that he had met Mr. Roy who agreed to the proposed stipulation agreement, but now has learned that Mr. Roy has retained legal counsel to represent him on this case.

Mr. Michael (Mickey) Rocque introduced himself to the Board as the legal counsel for the property owner and the store owner.

Mr. Walker indicated that the City would be presenting the stipulation agreement previously signed by Mr. Roy to the Board for acceptance. Mr. Walker asked Mr. Rocque to sign the agreement as well which Mr. Rocque proceeded to do. Chair Reynolds asked Mr. Walker to read the stipulation agreement.

Mr. Walker reviewed the stipulation agreement as follows:

1. The owner(s) will file a No Trespass Affidavit with the Fort Lauderdale Police Department and post No Trespassing signs on the property within fourteen (14) days and thereafter enforce trespass laws.
2. The owner(s) will repair and maintain existing lighting (according to all Code requirements) within thirty (30) days.
3. The owner(s) will place stickers on payphones stating phone numbers are recorded and continue to prevent phones from receiving incoming calls, within thirty (30) days.
4. The owner(s) will conspicuously post signs warning of surveillance equipment within thirty (30) days.
5. If any of the above-listed items are not complied with within the time frame set forth, a fine in the amount of \$250.00, per day, per item, not to exceed \$250.00 per day, will be imposed for each day of non-compliance.
6. The owner(s) is assessed 25% (\$97.23) of the investigative costs to be paid within 30 days. The Board will waive the balance (\$291.72) of the investigative costs if the owners comply with the Board's Order within the specified time frame(s). If the owners fail to comply within the specified time frame(s), the remaining 75% of the investigative costs will be assessed. (Total costs \$388.95)
7. The owner(s) will appear before the Nuisance Abatement Board at the August Nuisance Abatement meeting (or, if no meeting occurs in August, at the succeeding Nuisance Abatement meeting) for a status hearing.
8. The Nuisance Abatement Board will retain jurisdiction over the property for a period of one (1) year.

Mr. Rocque asked that the City notify him and the property owner after twenty-five days in order to find out if compliance has been achieved or what else must be done to achieve compliance.

Mr. Narinedat Roy introduced himself as the property owner and Mr. Jagdish Tankesore introduced himself as the tenant (store owner).

Chair Reynolds confirmed with Mr. Roy and Mr. Tankesore that they understood the agreement and were bound to those obligations. Mr. Rocque confirmed that both parties understood and agreed to the provisions of the agreement.

Chair Reynolds confirmed that the case would be brought back before the Board for a status hearing on August 9th. Mr. MacGrotty clarified that the City is not obligated to inform the property owner if compliance is not achieved prior to the thirty days so the property owner should be proactive in making sure compliance is achieved prior to the next meeting.

Chair Reynolds opened the case to the public for comment.

Ms. Larhonda Ware, President of the Dorsey Bend Civic Association was present to speak on behalf of the citizens that reside on 10th Terrace. Ms. Ware reported the residents had numerous complaints about loitering, drug dealing and prostitution at the property. Ms. Ware indicated that there is a low income housing development nearby that is home to many seniors who have their grandchildren over frequently. Ms. Ware remarked that the residents would like to be here but are afraid of their names being made public so she is present to make sure their concerns are addressed.

Ms. Ware stated that the stipulation agreement addresses many of the resident's concerns. The lighting and the rules against loitering will ease some of the problems. The store has been a problem for over ten years, but she will share the agreement provisions with the five seniors and the other people that live nearby who are concerned with the trash and the garage operation in the back. One resident is concerned with the grease that accumulates in the rear and would like the environmental inspectors to check that out as well.

Chair Reynolds assured Ms. Ware that the Board will retain jurisdiction on the property for one year so if the situation does not improve the Board needs to be made aware so changes can be made.

Mr. Cooper commented that often the Board only gets police reports and they don't often get community input. Mr. Cooper stated he was concerned that the community is scared to come and speak in public about the problems. Ms. Ware stated that some of the residents know the children and they are afraid of them. Mr. Cooper stated that his impression from the police reports was that the problem isn't as bad as being presented tonight. Ms. Ware responded that the problem has gotten worse over time.

Mr. MacGrotty asked about the additional activities going on such as car repairs in the garage in the rear and trash being strewed all around the property and on adjacent properties and did the City observe these activities as well. Sgt. Eaves stated he observed a garage in the rear but it was showing a different address and he did observe the smell of oil.

Mr. MacGrotty asked Mr. Roy if the garage belonged to him. Mr. Roy responded that is a separate auto repair shop and the owner is in the process of getting a license. Mr. Roy stated he does own the property; the operator does have a permit but the license has expired. Mr. Roy stated he felt the operation was being run in an acceptable manner.

Mr. MacGrotty suggested that the Board add to the stipulation agreement that the property be cleaned up and kept clean. Mr. Cooper suggested that the language read that the property be maintained to current code. Mr. Rocque agreed that the provision be added to the agreement.

Ms. Mayers asked what surfaces the oil was leaking onto. Mr. Roy stated that the parking lot was asphalt and the inside of the garage was concrete; he was unaware of where any oil was leaking. Ms. Ware responded that when it rains the oil runs down into the road in the puddle on the asphalt.

Mr. Jolly commented that the environmental issues are probably the jurisdiction of other governmental agencies, not this Board. Chair Reynolds stated that the parties agreed to the stipulation that the property be maintained to code.

Sgt. Finn, a City of Fort Lauderdale police officer, commented that he is very familiar with the subject property which has always been a hot spot for random, violent crimes. Sgt. Finn commented that there is constant loitering and drug dealing at the location as well as open drinking. Sgt. Finn stated he is currently in operations support and works the security detail for the Green Apartments across the street. Sgt. Finn testified that bottles are thrown from inside the business out into the street. Sgt. Finn stated he has confronted the clerk in the store and received no cooperation. Sgt. Finn stated he agrees with the stipulation agreement but asked how it could be enforced. Chair Reynolds indicated that it was a starting point; if the agreement doesn't work the Board makes adjustments.

Mr. Rocque stated that the problems in the area are not the store's creation. The property owners welcome the police support and will do everything they can to help. If the no trespassing signs are there and people park their cars, have them towed. The police can arrest loiterers; the store is limited in what it can do. Mr. Walker stated that he has observed open drinking on the property which is a violation of the store's license.

Mr. Rocque concurred that was a violation and the store will not allow drinking on the property and enforce the rules within the property boundaries.

Mr. Bill Burrows, the general manager for the company that owns the Green Apartments across from the market, attested to the previous comments made. Additionally, Mr. Burrows stated that the apartments have eight parking spaces and the store owners and employees park in the spaces. The apartments have taken a serious hit as well due to the activities occurring at the store. Mr. Burrows schedules fifty hours of police security for the apartments. The apartments also have groundskeepers that are constantly cleaning up garbage originating from the subject property. The company spends over \$200,000 a year for police details. Mr. Burrows suggested uniformed security during business hours out front and in the store.

Mr. Walker asked that Mr. Burrows come back to the August meeting to provide an update on if the agreement has made any improvements. Mr. Burrows agreed. Mr. Walker suggested that possibly the property owner and the apartments go in together on security to reduce costs for both parties. Mr. Burrows commented that the security is a burden to the poor residents.

Mr. Cooper asked if Mr. Burrows had any suggestions related to video surveillance. Mr. Burrows replied that security exposure is the key; uniformed security is needed.

Mr. Walker asked Mr. Roy how many times the store employees called police. Mr. Roy indicated in one year it was 114 times when he owned it. The store owner is as afraid as the residents to make the calls because of fear of reprisals.

Ms. Watkins asked Mr. Roy if he was open to uniformed security. Mr. Roy stated that his cousin owns the store. The video records inside and outside and if police come by more often they can provide the video to them.

Mr. Rocque suggested holding off on uniformed security for one month and try removal of the payphones.

Chair Reynolds asked if the parties were agreeable to the stipulation to remove all payphones completely if possible. All parties agreed to the removal of the phones if possible. Mr. Roy stated that the payphone operator has a long term lease for one of the payphones and it cannot be removed; however, it only allows outgoing calls.

Mr. Tankesore commented that cameras are located inside and outside the store. The only time police come is when they are looking for someone. The cameras cover the property and the police may have access to the video at any time.

Ms. Mayers asked about the parking spaces. Mr. Tankesore indicated there are seven parking spaces on the site.

Mr. MacGrotty asked if there was a sign indicating that people are being recorded. Mr. MacGrotty stated that the owner could install a monitor that shows the people they are actually being filmed; it works.

Sgt. Eaves stated he spoke to the gentleman who operated the payphones who indicated the phone is outgoing only. Sgt. Eaves commented that the signs informing of video surveillance need to be more conspicuously posted. The monitoring system is good but it's in the back of the store; customers don't see it nor does the clerk.

Mr. Rocque stated that Sgt. Eaves' proposals are proper and the owners would be agreeable to them.

Motion made by Mr. Cooper, seconded by Mr. MacGrotty to approve the proposed stipulation agreement with the following revisions:

- 1, Paragraph 3: The owners will remove the payphones if possible.
2. Paragraph 4: Owner will conspicuously post larger signs within plain view warning of surveillance.
3. New Paragraph 5: Move monitors that survey the outside up to the front of the store where employees can monitor what is going on.
4. New Paragraph 6: The entire property will be kept up to all codes.
5. The remaining paragraphs to be renumbered 7 through 10.

Mr. Cooper stated he didn't feel the agreement is tough enough. Mr. Walker remarked that if the City gets a stipulation agreement tonight the Board has jurisdiction for twelve months to take further steps if it fails.

In a roll call vote, the motion failed 2-3 with the vote as follows: Mr. Cooper, no; Ms. Mayers, no; Ms. Watkins, no; Mr. MacGrotty, yes; Chair Reynolds, yes.

Chair Reynolds indicated that since the Board failed to accept the stipulation agreement, the process is to proceed with an evidentiary hearing.

Mr. Rocque asked that Mr. Cooper be excused from decision making on the nuisance issue since he has an interest in the adjoining property. Mr. Jolly replied that under the

statute, property ownership is not sufficient for him to be recused without a showing of fact that he is actually biased.

Mr. Rocque stated he felt Mr. Cooper would be unable to make a fair and impartial decision. Mr. Jolly advised Mr. Cooper he is not obligated to recuse himself, but if there is any discomfort, Mr. Cooper should state his discomfort and complete the proper conflict of interest disclosure. Mr. Cooper stated that he does not have a direct financial interest in the outcome of the proceeding so he will not recuse himself.

[Chair Reynolds called a ten minute recess at 8:10 p.m. The hearing resumed at 8:20 p.m.]

Mr. Walker stated that Mr. Courtney Case for **Case No. 07-05-03** arrived – he was caught in a rain storm in Port St. Lucie. Mr. Walker advised Mr. Case that the Board had already acted on his case and that he was to attend the August 9th meeting for a status hearing.

Chair Reynolds called the evidentiary hearing on **Case No. 07-06-05** to begin.

Mr. Walker called Detective Benjamin Dusenbery to testify. Detective Dusenbery testified that he is familiar with the subject store. The store has been a constant problem for the five years he has worked for the City. Detective Dusenbery stated that between March 4th and March 10th on two separate occasions a confidential informant (CI) was directed to attempt to purchase narcotics from someone loitering at the store. The CI was successful in the purchase; however, an arrest was not made. Detective Dusenbery testified that he witnessed the transaction occurring within five feet from the side of the store front door, up against the building. Detective Dusenbery testified that the same CI made a controlled purchase between March 18th and March 24th, also within five feet in front of the store.

Detective Dusenbery stated that the substance purchased was presumed to be marijuana but the substance has not yet been tested. Detective Dusenbery stated that he has five years experience in narcotics ID training and enforcement. Detective Dusenbery stated he can only state the substance resembled marijuana and the Val Tox was positive.

Mr. Rocque asked Detective Dusenbery if the video inside the store was obtained and viewed in order to capture the seller. Detective Dusenbery replied no, the CI didn't want to testify. Detective Dusenbery confirmed that the CI was paid for each purchase, but Detective Dusenbery would not identify the CI.

Mr. Rocque continued with his cross examination of Detective Dusenbery regarding the specifics of the controlled purchases and then presented the defense's closing statement that the City had provided insufficient evidence that proves drugs were sold on the property.

Mr. Rocque presented a legal motion that evidence was insufficient and that it has not been proven that drugs were actually bought, and the burden of proof on the City to clearly establish the property as a nuisance has not been established. Mr. Rocque moved that the Board dismiss the case at this time based on insufficient evidence and allow the property owners and the City the opportunity to come to an amicable resolution.

Mr. Jolly stated that the motion before the Board should be that the respondent's motion for the equivalent of a directed verdict be granted. The request for deferral is part of the directed verdict.

Motion made by Mr. Cooper, seconded by Ms. Mayers, that the respondent's motion for the equivalent of a directed verdict be granted.

Mr. Walker asked that the City's attorney be given the opportunity to argue against the motion. Mr. Walker remarked that the standard of evidence is less than in a criminal court. Mr. Walker continued with the argument that the testimony was sufficient to establish probable cause.

In a roll call vote, the motion unanimously failed.

Mr. Rocque asked that the Board consider that the property and store owners came here in good faith and want to take the steps to improve the situation. Mr. Rocque asked that the Board table its action and allow the property owners to meet with the City to develop an acceptable resolution and come back to the Board at its August meeting.

Motion made by Mr. Cooper, seconded by Ms. Watkins, to declare the property a nuisance and the Board take jurisdiction. In a roll call vote, the motion was unanimously approved.

Chair Reynolds moved the hearing into the recommendations phase.

Motion was made by Mr. Cooper, seconded by Ms. Watkins, to impose the following stipulation agreement provisions:

1. The owner(s) will file a No Trespass Affidavit with the Fort Lauderdale Police Department and post No Trespassing signs on the property within three (3) business days and thereafter enforce trespass laws.
2. The owner(s) will repair and maintain existing lighting (according to all Code requirements) within ten (10) days.
3. The owner(s) will place stickers on payphones stating phone numbers are recorded and continue to prevent phones from receiving incoming calls within thirty (30) days.
4. The owner(s) will conspicuously post signs warning of surveillance equipment within fourteen (14) days.
5. Video surveillance will operate 24 hours a day, available to police during all hours of operation with a video monitor visible to the clerk at the counter of all outside cameras.
6. Uniformed security during business hours.
7. Property will be kept up to all City codes.
8. The owner(s) will be assessed 100% of the investigative costs to be paid within 30 days. The total cost is \$388.95.
9. The owner(s) will appear before the Nuisance Abatement Board at our next scheduled meeting for a status hearing.
10. The Nuisance Abatement Board will retain jurisdiction over the property for a period of one (1) year.
11. If any of the above-listed items are not complied with within the time frame set forth, a fine in the amount of \$250.00, per day, per item, not to exceed \$250.00 per day, will be imposed for each day of non-compliance.

Mr. Rocque commented that requiring uniformed security will put the store owner out of business.

In a roll call vote the motion passed with a vote of 4-1 as follows: Mr. Cooper, yes; Ms. Mayers, yes; Ms. Watkins, yes; Mr. MacGrotty, yes; Chair Reynolds, no.

7. Board Discussion

Thereupon, with no additional business to come before the Board, the meeting adjourned at 9:18 p.m.