

**CITY OF TEMPLE TERRACE, FLORIDA
MUNICIPAL CODE ENFORCEMENT BOARD
MINUTES**

**Regular Meeting
Wednesday, May 12, 2010
Council Chambers – City Hall**

The regular meeting of the Municipal Code Enforcement Board was held on Wednesday, May 12, 2010, in the Council Chambers at City Hall.

PRESENT WERE: Chairman David A. Pogorilich and Board Members Rick Gibson, Maura Lear, William Newkirk, James Ruyle, Richard Schmidt, and Michael Urbas.

ALSO PRESENT WERE: Attorney for the City Cathleen “Cate” O’Dowd, Alternate Board Member Andrew Ross, City Clerk Lisa Small, Code Compliance Director Joe Gross, Code Compliance Officers Tom Borroni, and Jack Knowles, Code Compliance Secretary Shana Hunt, Vincent Hernandez, Rick Allmond, Wendy Savage, April Little, Dawn Ewing, Nadine Pohowsky, Daniel G. Drake, and several other persons.

Chairman Pogorilich called the meeting to order at 7:00 p.m. and, following the Pledge of Allegiance to the flag, outlined the procedures the Board would follow. All persons wishing to give testimony were sworn in by the City Clerk.

HEARINGS:

CASE NO. 10-0004 – City versus Charles C. Adams II - 7806 River Ridge Drive - Section 25.760.2(a) – Parking on Non-Durable Surface.

Attorney O’Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violator. Code Compliance Officer Tom Borroni, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violation was served to the alleged violator. He provided testimony regarding the alleged violation, and submitted photographic evidence of the alleged subject violation, labeled Exhibits 1 and 2, establishing a violation of Code Section 25.760.2(a), which the Board accepted. Officer Borroni then submitted an Affidavit of Compliance, dated May 5, 2010, which the Board accepted. The Respondent was not present.

Based on the testimony of Code Compliance Officer Borroni, and the documentary evidence received by the Board, upon motion of Board Member Lear, seconded by Board Member Schmidt, the Board **FOUND Charles C. Adams, II**, in **Case No. 10-0004** to be **GUILTY** of violating **Section 25.760.2(a)**, of the City Code, but because the property was brought into compliance before the date of this hearing, **NO FINE** was assessed. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting “aye”, no “nay.”

CASE NO. 10-0459 – City versus Alan K. and Velma Lynn Geer - 9413 Alanbrooke Street – Section 25.750.4 – Material and Equipment Storage in Residential Zoning Districts.

Attorney O’Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violators. Code Compliance Officer Tom Borroni, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violation was served to the alleged violators.

Code Compliance Officer Borroni provided testimony regarding the alleged violation, submitted photographic evidence of the alleged subject violation, labeled Exhibits 1 and 2, establishing a violation of Code Section 25.750.4, which the Board accepted. Code Compliance Officer Borroni submitted an Affidavit of Compliance, dated May 10, 2010, which the Board accepted. The Respondents were not present.

Board Member Urbas questioned that Code Compliance Officer Borroni stated when the violation was issued, the vehicle was not in compliance; later on, he stated the tag was on and off again, and it currently has a tag. Code Compliance Officer Borroni confirmed that was correct. Board Member Urbas questioned whether the Code Compliance Officer had verified the tag was for that particular vehicle, to which the Code Compliance Officer said he did not, but said they could run the plate. He explained they do not typically do that, as long as the vehicle has a tag.

Board Member Urbas asked whether it has to be a legal tag. Chairman Pogorilich commented if it happens again, he is sure the Code Compliance Officer will run the tag to ensure it is a legal tag.

Based on the testimony of Code Compliance Officer Borroni, and the documentary evidence received by the Board, upon motion of Board Member Gibson, seconded by Board Member Urbas, the Board **FOUND Alan K. Geer and Velma Lynn Geer, in Case No. 10-0459 to be GUILTY** of violating **Section 25.750.4**, of the City Code, but because the property was brought into compliance before the date of this hearing, **NO FINE** was assessed. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting “aye”, no “nay.”

Prior to the vote, Board Member Urbas asked whether an illegal tag is a Code violation. Code Compliance Director Gross commented the City Code requires vehicles to have current valid registration; if, after the Board’s finding this evening, they find that the tag is not assigned to the vehicle, they can open a repeat case and fines per day could begin accruing.

Board Member Ruyle commented that when it happens the second time, it will be time to run the tag.

CASE NO. 10-0502 – City versus Willie J. MacArthur, Proprietor, Willie’s Tree Service – 214 Redwood Avenue – Section 25.735.4(a)(1) – Unlawful Tree Removal.

Attorney O’Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violator.

Code Compliance Director Joe Gross, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violation was served to the alleged violator. He provided testimony regarding the alleged violation, including the claims of both the occupant, Peter Foret, and the contractor, Willie J. MacArthur, Proprietor of Willie’s Tree Service, that they believed the other party had obtained the permit. He further testified that a Notice of Violation was issued on March 8, 2010, to both the homeowner and the contractor; however, the receipt of notice by the contractor was delayed, because in addition to fleeing the site, the contractor also relocated his residence. He continued, stating that the contractor was eventually located and hand-delivery of the notice was made on March 29, 2010.

The Code Compliance Director stated the violation deadline of April 5, 2010, was extended due to the delay in service. He continued that compliance was effected as of April 12, 2010, for the property owners, who are missionaries currently out of the country, and an extension was provided for the contractor; however, as of April 23, 2010, there was no change.

The Code Compliance Director reviewed that the last case concerning illegal tree removal that was before the Municipal Code Enforcement Board occurred in August of 2009; in that case the policy that was set and has moved forward, is that when a tree is removed illegally, the penalty is to replace the tree. He continued that clearly the easiest way to handle that has been to split the responsibilities for replacement between the homeowner and the contractor. He stated that in this case, the agent for the homeowners coordinated the necessary replacements, which were installed as of May 12, 2010; however, the contractor never came forward with this replacements, which could have been placed on site or as the Code provides, could have actually end up in a City park or playground. As a result, he said the case against the property owners and the occupant has been set aside, and this case is strictly against the contractor.

The Code Compliance Director submitted photographic evidence of the alleged subject violation, labeled Exhibits 1 through 3, which reflect removal of the tree and establish a violation of Code Section 25.735.4(a)(1), which the Board accepted. While the most recent inspection was today, the Code Compliance Director stated there has been no contribution of replacement trees by the contractor, with whom he spoke today; the contractor indicated to him he is not in a position to take care of it. The Code Compliance Director testified that the City's recommendation is consistent with the ruling by the Board in MCEB Case No. 09-1205, wherein the Board established a deadline, a fine accrued, and the Board stayed that fine when it reached a certain amount believed to be consistent with the purchase, delivery, and installation costs of five replacement trees, which was \$9,000. The Code Compliance Director continued, stating that in this case they are looking for two replacement trees and recommend a deadline of May 26, and request that if the case has not been resolved by the June 9, 2010, hearing date, that the fine be stayed at that date, when the fine will have accrued to approximately \$3,500, which is essentially consistent with the cost of the trees in the other tree removal case.

While this is purely a recommendation, the Code Compliance Director shared that the contractor in the prior case was in the office this week advising that business is up, and he is now in a position to resolve the matter; additionally, a title company called and advised that the lien is attaching to every property owned by that contractor. He continued that as much as this is not the typical case where the lien will go against the violation site, it does appear to have some ability to try to coerce compliance and eventually result in some replacement trees.

Board Member Lear commented that the Code Compliance Director mentioned that the replacement trees do not necessarily have to go on the subject property, but instead can go on any Temple Terrace public park. She questioned whether that choice is up to the Code Compliance Director. The Code Compliance Director responded that they have found the easiest scenario is that the contractor will go to a bona fide nursery, pay the cost of the specified number of replacement trees, and then the City Parks Department is in the position of wherever they need trees, they can go to the nursery and arrange to have those delivered. Board Member Lear questioned how they determine the specie of the tree.

The Code Compliance Director responded they would select the tree(s) from the approved tree list for shade trees, which allows them some discretion to select the trees they believe they need.

Board Member Lear questioned whether the onus is on the homeowner or the contractor, if a homeowner signs a contract with a tree contractor that says the contractor will secure the permit.

The Code Compliance Director responded it is really on all parties; contractually, the contractor has indicated he (the contractor) will take care of it. The Code Compliance Director continued that they discourage homeowners from pulling tree permits, because when a contractor comes in for a permit, the City will check to be sure he is a legitimate contractor, has Workman's Comp and all the other things that the permitting office verifies. He said they would prefer not to short-cut that process, but if the crew arrives to do the work, and there is not a placard posted, and they have no inkling of that, that is a major "red flag."

Board Member Gibson confirmed that 50% of the replacement trees are to be located on the subject site; he questioned whether the property owners have met that requirement, so that the remainder can be placed at another location of the City's choosing. The Code Compliance Director responded affirmatively. He explained that the larger the tree, the more replacements required; therefore, some people don't want that many trees on their property, and it is helpful to them to be able to have some of these excess trees off-site.

Chairman Pogorilich questioned whether there is any provision, law, or procedure to bar a tree contractor from working in the City while there is an outstanding fine. The Code Compliance Director responded that they have considered that, but do not know of anything that would give them legal authority to do that; however, if the tree contractor is generating income, perhaps they can resolve the case with the City. He added this is generally a major wakeup call for contractors who make that mistake.

Board Member Urbas confirmed with the Code Compliance Director that the figure of \$3,500 is based upon two trees to be installed. He questioned whether the contractor is aware this is what is expected and if the Board has to authorize that it becomes his obligation. Chairman Pogorilich responded that the motion should be phrased to recognize that the homeowners have fulfilled their part; the homeowners are in compliance.

The Code Compliance Director said the scenario he presented to them assumes that they take the same \$250 per day fine approach that they took in the other case; the totals he gave them assumed that approach. The Code Compliance Director confirmed that if the contractor can get with the Code Compliance Department between now and May 26th to resolve this matter, there will be no consequences.

Board Member Ruyle questioned whether there is a licensing requirement for tree trimmers. The Code Compliance Director responded that they are registered with the City; it is not a State-licensed trade, so there is no license. He added that they can become a certified Arborist through training through the International Society of Horticulture, but that is an international organization. Board Member Ruyle questioned whether the certification requires insurance, to which the response was that it does not.

The Code Compliance Director commented the industry has requested that the Legislature consider making it a State-licensed trade, since they deal with things that could cause great harm and/or destruction, but to date they have taken no action to do that. The Code Compliance Director offered that they do have a list of those contractors who are registered and have demonstrated they have what is required, which is available to our citizens.

Based on the testimony of Code Compliance Director Gross, and the documentary evidence received by the Board, upon motion of Board Member Gibson, seconded by Board Member Newkirk, the Board **FOUND Willie J. MacArthur, Proprietor, Willie's Tree Service, in Case No. 10-0502** to be **GUILTY** of violating **Section 25.735.4(a)(1)**, of the City Code, and gave the Respondent until **May 26, 2010**, to come into compliance with the Code Section in question. If the property does not come into compliance by that date, a fine of **\$250.00** per day shall accrue beginning **May 27, 2010**, until the date that the violator provides the City with evidence that the property has been brought into compliance **or until such time as the accrued fine totals \$3,500**. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

Prior to vote on the above motion, Board Member Urbas confirmed that the fine would be \$250 per day until it comes up to the \$3,500 figure. Chairman Pogorilich clarified the fine maxes out at \$3,500, even if he waits until August to pay it, plus the cost of the trees.

CASE NO. 10-0635 – City versus James W. Hart, Jr., Registered Agent, Marbella Terrace Townhomes HOA – 11568 Morris Bridge Road – Sections 25.765.5(b)(2) – Prohibited Portable Signs; and 25.765.5(c)(3) – Non-Government Flag Prohibitions.

Attorney O'Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violator. Code Compliance Director Joe Gross, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violations was served to the alleged violator. He provided testimony regarding the alleged violations, and noted that he met with a Marbella representative who proposed an alternative use of real estate signs, which the City modified and accepted; however, some of the unauthorized signs remain displayed as of April 26, 2010, and are still displayed today. He submitted photographic evidence of the alleged subject violations, labeled Exhibit 1 and 2, dated May 12, 2010, establishing a violation of Code Sections 25.765.5(b)(2) and 25.765.5(c)(3), which the Board accepted.

The Code Compliance Director recommended a deadline of Monday, May 17, 2010. He stated that he believes the issue is logistics at this point. The Respondent was not present.

Based on the testimony of Code Compliance Director Joe Gross, and the documentary evidence received by the Board, upon motion of Board Member Lear, seconded by Board Member Gibson, the Board **FOUND James W. Hart, Jr., Registered Agent, Marbella Terrace Townhomes HOA, in Case No. 10-0635** to be **GUILTY** of violating **Sections 25.765.5(b)(2) and 25.765.5(c)(3)**, of the City Code, and gave the Respondent until **the close of business on May 17, 2010**, to come into compliance with the Code Sections in question. If the property does not come into compliance by that date, a fine of **\$50.00** per day shall accrue beginning **May 18, 2010**, until the date that the violator provides the City with evidence that the property has been brought into compliance. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

CASE NO. 10-0678 – City versus Ann D. White, Trustee, and W. Mike White, Trustee – 516 Courtney Drive – Sections 27.726(a) – Failure to Obtain Annual Rental Permit; and 27.728(a) – Failure to Renew Annual Permit and Waivers.

Attorney O'Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violators.

Deputy Housing Official and Captain Andy Muzzy, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violations was served to the alleged violators. He provided testimony regarding the alleged violations, stating that the Whites were invoiced and paid the rental housing fee for their four rental properties in Temple Terrace in 2006 and 2007; in 2008, the Fire Department received a letter from Mr. White stating that he did not want to comply with the program any longer. Mr. White was invoiced again in 2009, with three requests, to no avail. He explained the Notice of Violation was issued on April 5, 2010, which stipulated a compliance deadline of April 16, 2010, and which the Whites received by certified mail on April 7, 2010. Although the property owner has advised of plans to apply for the rental permit, there was no change as of April 23, 2010; since that time, Mr. White submitted the applications for the four properties, paying the \$200 permit fee for each property for the year 2010. Captain Muzzy stated the City is also seeking the permit fees for 2009 at a cost of \$200 for each of the four properties.

Chairman Pogorilich questioned what happened to 2008, to which Captain Muzzy responded he believed it was missed along the way and not included in the Notice of Violation; therefore, they are just seeking 2009, since Mr. White has now paid for 2010 for each of the four properties.

Chairman Pogorilich stated that in an effort to save time, the following four cases, pertaining to the Temple Terrace properties of W. Mike and Ann D. White, Trustees, are identical, with the same documentary evidence for each of the four cases:

Case No. 10-0678 – 516 Courtney Drive

Case No. 10-0681 – 8405 Wakulla Drive

Case No. 10-0687 – 8016 Peach Drive

Case No. 10-0691 – 7918 Citrus Drive

If the Board wishes to proceed in that manner, the Attorney for the City said they would need to open each of the cases, in order for a ruling to be made that would apply to all of them. The Attorney for the City stated that for each case, the alleged violations are the same, being Section 27.726(a) - failure to obtain the annual rental permit, and Section 27.728(a) - failure to renew the annual rental permit and waivers.

Chairman Pogorilich questioned whether they are going to go back to 2008, to which Captain Muzzy responded he believes at this time, they are going to let 2008 go. Captain Muzzy presented a letter from Mr. White dated May 5, 2010, wherein he has agreed to file the applications for his four properties along with \$800, and will pay the additional \$800 by July 1, 2010; Fire Chief Chapman has accepted that agreement. The Board accepted the letter as evidence in each of the four cases.

Board Member Urbas confirmed with Captain Muzzy that the Whites were invoiced in 2008 three times for those fees. Board Member Urbas commented that there is an outstanding invoice for 2008 and the permit has been issued for 2010, which, he said, means the Whites have received a permit even though they have not paid for 2008. Captain Muzzy confirmed that was correct, adding the Housing Compliance staff will go out and inspect the properties next week; if any further problems are found at that time, he will be given a prescribed amount of time to bring those issues into compliance prior to a re-inspection.

Board Member Gibson inquired as to whether they are requesting a cap in terms of the fines that could possibly cover the 2008 outstanding invoices, if the 2009 amount is not paid by July 1.

The Attorney for the City stated that for the purposes of tonight's hearing, the 2008 violations were not included in the Notice of Violation, and are not before the Board for consideration; the focus is on 2009 and 2010.

Board Member Gibson said he would still question whether the City desires to have a cap on the fines.

Fire Chief Chapman explained this is the first group of cases that they have processed related to the Rental Housing Code in Chapter 27, so they do not have precedent set in regard to a fine-per-day or a cap. He said the City Council recently modified the City Code to include some late fees in the Rental Permit Program; the late fee is one-half of the original amount of the fee, which equates to \$300 per unit. To be reasonable, Chief Chapman said he would assume a cap of \$300 per unit, if not more.

Chairman Pogorilich explained to Chief Chapman that he does not have to set a cap; they can let the fine continue to run per unit per day until it is paid. He added that even if Chief Chapman was to suggest a cap, there is no guarantee the Board would accept it. Chief Chapman said he does understand that; as part of the Board's consideration, he asked them to consider that this program is one of the few in the City that was started with the idea that it would cover the staff expenses associated with running the program; there are very few things in the Code that have any sort of punitive damages associated with them for not being compliant.

Based on the testimony of Deputy Housing Official and Captain Andy Muzzy, and the documentary evidence received by the Board, upon motion of Board Member Urbas, seconded by Board Member Schmidt, the Board **FOUND Ann D. White, Trustee, and W. Mike White, Trustee, in Case No. 10-0678** to be **GUILTY** of violating **Sections 27.726(a) and 27.728(a)**, of the City Code, and gave the Respondents until **July 1, 2010**, to come into compliance with the Code Sections in question. If the property does not come into compliance by that date, a fine of **\$100** per day shall accrue beginning **July 2, 2010**, until the date that the violators provide the City with evidence that the property has been brought into compliance. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

Prior to vote on the above motion, Board Member Ruyle questioned whether the complaint clearly stated it was for multiple years; he said he believed they tried to settle it in good faith for a year, which is not reflected here. He said he is tempted to let it go and come back to them a little clearer. Chairman Pogorilich disagreed, pointing out it is clearly stated in the violation detail that it covers multiple years.

CASE NO. 10-0681 – City versus W. Mike White, Trustee, and Ann D. White, Trustee – 8405 Wakulla Drive – Sections 27.726(a) – Failure to Obtain Annual Rental Permit; and 27.728(a) – Failure to Renew Annual Permit and Waivers.

Attorney O'Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violators.

Deputy Housing Official and Captain Andy Muzzy, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violations was served to the alleged violators. He provided testimony regarding the alleged violations, stating that the Whites were invoiced and paid the rental housing fee for their four rental properties in Temple Terrace in 2006 and 2007; in 2008, the Fire Department received a letter from Mr. White stating that he did not want to comply with the program any longer. Mr. White was invoiced again in 2009, with three requests, to no avail. He explained the Notice of Violation was issued on April 5, 2010, which stipulated a compliance deadline of April 16, 2010, and which the Whites received by certified mail on April 7, 2010. Although the property owner has advised of plans to apply for the rental permit, there was no change as of April 23, 2010; since that time, Mr. White submitted the applications for the four properties, paying the \$200 permit fee for each property for the year 2010. Captain Muzzy stated the City is also seeking the permit fees for 2009 at a cost of \$200 for each of the four properties.

Chairman Pogorilich questioned what happened to 2008, to which Captain Muzzy responded he believed it was missed along the way and not included in the Notice of Violation; therefore, they are just seeking 2009, since Mr. White has now paid for 2010 for each of the four properties.

Chairman Pogorilich stated that in an effort to save time, the following four cases, pertaining to the Temple Terrace properties of W. Mike and Ann D. White, Trustees, are identical, with the same documentary evidence for each of the four cases:

- Case No. 10-0678 – 516 Courtney Drive
- Case No. 10-0681 – 8405 Wakulla Drive
- Case No. 10-0687 – 8016 Peach Drive
- Case No. 10-0691 – 7918 Citrus Drive

If the Board wishes to proceed in that manner, the Attorney for the City said they would need to open each of the cases, in order for a ruling to be made that would apply to all of them. The Attorney for the City stated that for each case, the alleged violations are the same, being Section 27.726(a) - failure to obtain the annual rental permit, and Section 27.728(a) - failure to renew the annual rental permit and waivers.

Chairman Pogorilich questioned whether they are going to go back to 2008, to which Captain Muzzy responded he believes at this time, they are going to let 2008 go. Captain Muzzy presented a letter from Mr. White dated May 5, 2010, wherein he has agreed to file the applications for his four properties along with \$800, and will pay the additional \$800 by July 1, 2010; Fire Chief Chapman has accepted that agreement. The Board accepted the letter as evidence in each of the four cases.

Board Member Urbas confirmed with Captain Muzzy that the Whites were invoiced in 2008 three times for those fees. Board Member Urbas commented that there is an outstanding invoice for 2008 and the permit has been issued for 2010, which, he said, means the Whites have received a permit even though they have not paid for 2008. Captain Muzzy confirmed that was correct, adding the Housing Compliance staff will go out and inspect the properties next week; if any further problems are found at that time, he will be given a prescribed amount of time to bring those issues into compliance prior to a re-inspection.

Board Member Gibson inquired as to whether they are requesting a cap in terms of the fines that could possibly cover the 2008 outstanding invoices, if the 2009 amount is not paid by July 1.

The Attorney for the City stated that for the purposes of tonight's hearing, the 2008 violations were not included in the Notice of Violation, and are not before the Board for consideration; the focus is on 2009 and 2010.

Board Member Gibson said he would still question whether the City desires to have a cap on the fines.

Fire Chief Chapman explained this is the first group of cases that they have processed related to the Rental Housing Code in Chapter 27, so they do not have precedent set in regard to a fine-per-day or a cap. He said the City Council recently modified the City Code to include some late fees in the Rental Permit Program; the late fee is one-half of the original amount of the fee, which equates to \$300 per unit. To be reasonable, Chief Chapman said he would assume a cap of \$300 per unit, if not more.

Chairman Pogorilich explained to Chief Chapman that he does not have to set a cap; they can let the fine continue to run per unit per day until it is paid. He added that even if Chief Chapman was to suggest a cap, there is no guarantee the Board would accept it. Chief Chapman said he does understand that; as part of the Board's consideration, he asked them to consider that this program is one of the few in the City that was started with the idea that it would cover the staff expenses associated with running the program; there are very few things in the Code that have any sort of punitive damages associated with them for not being compliant.

Based on the testimony of Deputy Housing Official and Captain Andy Muzzy, and the documentary evidence received by the Board, upon motion of Board Member Urbas, seconded by Board Member Schmidt, the Board **FOUND W. Mike White and Ann D. White, Trustees, in Case No. 10-0681** to be **GUILTY** of violating **Sections 27.726(a) and 27.728(a)**, of the City Code, and gave the Respondents until **July 1, 2010**, to come into compliance with the Code Sections in question. If the property does not come into compliance by that date, a fine of **\$100** per day shall accrue beginning **July 2, 2010**, until the date that the violators provide the City with evidence that the property has been brought into compliance. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

Prior to vote on the above motion, Board Member Ruyle questioned whether the complaint clearly stated it was for multiple years; he said he believed they tried to settle it in good faith for a year, which is not reflected here. He said he is tempted to let it go and come back to them a little clearer. Chairman Pogorilich disagreed, pointing out it is clearly stated in the violation detail that it covers multiple years.

CASE NO. 10-0687 – City versus W. Mike White, Trustee, Ann D. White, Trustee – 8016 Peach Drive – Sections 27.726(a) – Failure to Obtain Annual Rental Permit; and 27.728(a) – Failure to Renew Annual Permit and Waivers.

Attorney O'Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violators.

Deputy Housing Official and Captain Andy Muzzy, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violations was served to the alleged violators. He provided testimony regarding the alleged violations, stating that the Whites were invoiced and paid the rental housing fee for their four rental properties in Temple Terrace in 2006 and 2007; in 2008, the Fire Department received a letter from Mr. White stating that he did not want to comply with the program any longer. Mr. White was invoiced again in 2009, with three requests, to no avail. He explained the Notice of Violation was issued on April 5, 2010, which stipulated a compliance deadline of April 16, 2010, and which the Whites received by certified mail on April 7, 2010. Although the property owner has advised of plans to apply for the rental permit, there was no change as of April 23, 2010; since that time, Mr. White submitted the applications for the four properties, paying the \$200 permit fee for each property for the year 2010. Captain Muzzy stated the City is also seeking the permit fees for 2009 at a cost of \$200 for each of the four properties.

Chairman Pogorilich questioned what happened to 2008, to which Captain Muzzy responded he believed it was missed along the way and not included in the Notice of Violation; therefore, they are just seeking 2009, since Mr. White has now paid for 2010 for each of the four properties.

Chairman Pogorilich stated that in an effort to save time, the following four cases, pertaining to the Temple Terrace properties of W. Mike and Ann D. White, Trustees, are identical, with the same documentary evidence for each of the four cases:

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Board Member Gibson said he would still question whether the City desires to have a cap on the fines.

Fire Chief Chapman explained this is the first group of cases that they have processed related to the Rental Housing Code in Chapter 27, so they do not have precedent set in regard to a fine-per-day or a cap. He said the City Council recently modified the City Code to include some late fees in the Rental Permit Program; the late fee is one-half of the original amount of the fee, which equates to \$300 per unit. To be reasonable, Chief Chapman said he would assume a cap of \$300 per unit, if not more.

Chairman Pogorilich explained to Chief Chapman that he does not have to set a cap; they can let the fine continue to run per unit per day until it is paid. He added that even if Chief Chapman was to suggest a cap, there is no guarantee the Board would accept it. Chief Chapman said he does understand that; as part of the Board's consideration, he asked them to consider that this program is one of the few in the City that was started with the idea that it would cover the staff expenses associated with running the program; there are very few things in the Code that have any sort of punitive damages associated with them for not being compliant.

Based on the testimony of Deputy Housing Official and Captain Andy Muzzy, and the documentary evidence received by the Board, upon motion of Board Member Urbas, seconded by Board Member Schmidt, the Board **FOUND W. Mike White and Ann D. White, Trustees, in Case No. 10-0687** to be **GUILTY** of violating **Sections 27.726(a) and 27.728(a)**, of the City Code, and gave the Respondents until **July 1, 2010**, to come into compliance with the Code Sections in question. If the property does not come into compliance by that date, a fine of **\$100** per day shall accrue beginning **July 2, 2010**, until the date that the violators provide the City with evidence that the property has been brought into compliance. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

Prior to vote on the above motion, Board Member Ruyle questioned whether the complaint clearly stated it was for multiple years; he said he believed they tried to settle it in good faith for a year, which is not reflected here. He said he is tempted to let it go and come back to them a little clearer. Chairman Pogorilich disagreed, pointing out it is clearly stated in the violation detail that it covers multiple years.

CASE NO. 10-0691 – City versus W. Mike White, Trustee, and Ann D. White, Trustee – 7918 Citrus Drive – Sections 27.726(a) – Failure to Obtain Annual Rental Permit; and 27.728(a) – Failure to Renew Annual Permit and Waivers.

Attorney O'Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violators.

Deputy Housing Official and Captain Andy Muzzy, who was duly sworn, provided testimony with respect to the manner in which notification of the alleged violations was served to the alleged violators. He provided testimony regarding the alleged violations, stating that the Whites were invoiced and paid the rental housing fee for their four rental properties in Temple Terrace in 2006 and 2007; in 2008, the Fire Department received a letter from Mr. White stating that he did not want to comply with the program any longer. Mr. White was invoiced again in 2009, with three requests, to no avail. He explained the Notice of Violation was issued on April 5, 2010, which stipulated a compliance deadline of April 16, 2010, and which the Whites received by certified mail on April 7, 2010. Although the property owner has advised of plans to apply for the rental permit, there was no change as of April 23, 2010; since that time, Mr. White submitted the applications for the four properties, paying the \$200 permit fee for each property for the year 2010. Captain Muzzy stated the City is also seeking the permit fees for 2009 at a cost of \$200 for each of the four properties.

Chairman Pogorilich questioned what happened to 2008, to which Captain Muzzy responded he believed it was missed along the way and not included in the Notice of Violation; therefore, they are just seeking 2009, since Mr. White has now paid for 2010 for each of the four properties.

Chairman Pogorilich stated that in an effort to save time, the following four cases, pertaining to the Temple Terrace properties of W. Mike and Ann D. White, Trustees, are identical, with the same documentary evidence for each of the four cases:

Case No. 10-0678 – 516 Courtney Drive

Case No. 10-0681 – 8405 Wakulla Drive

Case No. 10-0687 – 8016 Peach Drive

Case No. 10-0691 – 7918 Citrus Drive

If the Board wishes to proceed in that manner, the Attorney for the City said they would need to open each of the cases, in order for a ruling to be made that would apply to all of them. The Attorney for the City stated that for each case, the alleged violations are the same, being Section 27.726(a) - failure to obtain the annual rental permit, and Section 27.728(a) - failure to renew the annual rental permit and waivers.

Chairman Pogorilich questioned whether they are going to go back to 2008, to which Captain Muzzy responded he believes at this time, they are going to let 2008 go. Captain Muzzy presented a letter from Mr. White dated May 5, 2010, wherein he has agreed to file the applications for his four properties along with \$800, and will pay the additional \$800 by July 1, 2010; Fire Chief Chapman has accepted that agreement. The Board accepted the letter as evidence in each of the four cases.

Board Member Urbas confirmed with Captain Muzzy that the Whites were invoiced in 2008 three times for those fees. Board Member Urbas commented that there is an outstanding invoice for 2008 and the permit has been issued for 2010, which, he said, means the Whites have received a permit even though they have not paid for 2008. Captain Muzzy confirmed that was correct, adding the Housing Compliance staff will go out and inspect the properties next week; if any further problems are found at that time, he will be given a prescribed amount of time to bring those issues into compliance prior to a re-inspection.

Board Member Gibson inquired as to whether they are requesting a cap in terms of the fines that could possibly cover the 2008 outstanding invoices, if the 2009 amount is not paid by July 1.

The Attorney for the City stated that for the purposes of tonight's hearing, the 2008 violations were not included in the Notice of Violation, and are not before the Board for consideration; the focus is on 2009 and 2010.

Board Member Gibson said he would still question whether the City desires to have a cap on the fines.

Fire Chief Chapman explained this is the first group of cases that they have processed related to the Rental Housing Code in Chapter 27, so they do not have precedent set in regard to a fine-per-day or a cap. He said the City Council recently modified the City Code to include some late fees in the Rental Permit Program; the late fee is one-half of the original amount of the fee, which equates to \$300 per unit. To be reasonable, Chief Chapman said he would assume a cap of \$300 per unit, if not more.

Chairman Pogorilich explained to Chief Chapman that he does not have to set a cap; they can let the fine continue to run per unit per day until it is paid. He added that even if Chief Chapman was to suggest a cap, there is no guarantee the Board would accept it. Chief Chapman said he does understand that; as part of the Board's consideration, he asked them to consider that this program is one of the few in the City that was started with the idea that it would cover the staff expenses associated with running the program; there are very few things in the Code that have any sort of punitive damages associated with them for not being compliant.

Based on the testimony of Deputy Housing Official and Captain Andy Muzzy, and the documentary evidence received by the Board, upon motion of Board Member Urbas, seconded by Board Member Schmidt, the Board **FOUND W. Mike White and Ann D. White, Trustees, in Case No. 10-0691** to be **GUILTY** of violating **Sections 27.726(a) and 27.728(a)**, of the City Code, and gave the Respondents until **July 1, 2010**, to come into compliance with the Code Sections in question. If the property does not come into compliance by that date, a fine of **\$100** per day shall accrue beginning **July 2, 2010**, until the date that the violators provide the City with evidence that the property has been brought into compliance. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

Prior to vote on the above motion, Board Member Ruyle questioned whether the complaint clearly stated it was for multiple years; he said he believed they tried to settle it in good faith for a year, which is not reflected here. He said he is tempted to let it go and come back to them a little clearer. Chairman Pogorilich disagreed, pointing out it is clearly stated in the violation detail that it covers multiple years.

CASE NO. 10-0760 – City versus Cellular Touch Wireless, Inc., dba Metro PCS – 8753 Temple Terrace Highway – Section 13.155(a) – Failure to Pay Local Business Tax and Post Receipt for Same.

Attorney O’Dowd introduced the case and confirmed with the City Clerk that the Notice of Violation, Notice of Hearing, and evidence of receipt were part of the record and were properly served on the violator.

Code Compliance Director Joe Gross, who was duly sworn, first clarified for the record that the number of the address of the business should read 8753 and not 8735. The Code Compliance Director provided testimony with respect to the manner in which notification of the alleged violation was served to the alleged violator, noting that the subject property is located in a shopping center and most of the documents were hand-delivered. He provided testimony regarding the alleged violation, establishing a violation of Code Section 13.155(a). The Code Compliance Director stated that the owner telephoned him on April 23, 2010, and indicated he would be resolving it, but there was still no change as of April 26, 2010. He continued that today’s inspection found the business is still there and operating; an application has been submitted to the City by the business for the Local Business Tax and is being processed; it will be released when remittance is received for all other outstanding accounts. He recommended that the next hearing date be used as the deadline. The Respondent was not present.

Based on the testimony of Code Compliance Director Joe Gross, and the documentary evidence received by the Board, upon motion of Board Member Lear, seconded by Board Member Newkirk, the Board **FOUND Cellular Touch Wireless, Inc., dba Metro PCS, in Case No. 10-0760 to be GUILTY** of violating **Section 13.155(a)**, of the City Code, and gave the Respondent until **June 9, 2010**, to come into compliance with the Code Section in question. If the property does not come into compliance by that date, a fine of **\$50.00** per day shall accrue beginning **June 10, 2010**, until the date that the violator provides the City with evidence that the property has been brought into compliance. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting “aye”, no “nay.”

UNFINISHED BUSINESS/PRIOR CASE HEARINGS:

Status Report of Compliance/Non Compliance with previously issued ORDERS:

Noting the presence of interested parties, Chairman Pogorilich announced the cases would be taken out of order to accommodate those Respondents present.

CASE NO. 09-0942 – City versus W. Bradley Munroe, Esq., Registered Agent, CNLKOR River Chase, LLC - 6900 Aruba Avenue - Section 8.830(a)(1) – Permits.

Attorney O’Dowd introduced the case and stated the Code Compliance Director has an update on this case to present to the Board.

Code Compliance Director Gross reviewed that at the last meeting the issue was air conditioning concerns; the Community Development Director is here tonight to clarify those concerns. He added that it appears the Respondent has worked out an arrangement with the City to come into compliance.

Community Development Director and Building Official Charles Stephenson explained that about a year ago the City came to an agreement with River Chase to address the outstanding safety issues and the issue with the air conditioning. He stated that within the last nine months, the property management company has been able to complete about 600-700 repairs to exterior problems with the air conditioning units; there is still the issue of an agreed upon estimated 49 units that remain unpermitted. He said they have accepted a list from the property management company that the City still has to permit and inspect "after the fact." He said he believes the property management company will request additional time to accomplish that, and with the progress that has been made, he requested that the Board keeps this going.

The Community Development Director commented it is difficult to identify exactly which units were installed, adding they have negotiated this out. He requested, on behalf of the property management company, that the Board continue to extend this out, adding that he anticipates it to be able to be completed rather quickly, as the units are up and running, and are probably okay. He explained they just need the opportunity to document and inspect the units. He noted they expect to find minor repairs that will need to be made, but the priority was to get the outside done. He believes it could be completed by June 9, 2010.

Upon motion of Board Member Gibson, seconded by Board Member Lear, the compliance deadline in **Case No. 09-0942, City versus W. Bradley Munroe, Esq., Registered Agent CNL KOR River Chase, LLC**, was **EXTENDED until June 9, 2010**. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting "aye", no "nay."

CASE NO. 10-0158 – City versus Stuart J. Zook, Registered Agent, Normandy Acquisition LP– 11110 North 56th Street - Sections 8.815(b) – Florida Building Code - Applicability; 8.830(a)(1) – Permits – Required; 25.780.5 – Maintenance; 27.750(m)(3) – Exterior and Interior of Structures – Roofs; 28.840(d)(1) – Parking Lots and Walkways – Maintenance; 28.840(d)(2) – Parking Lots and Walkways – Surfaces.

Attorney O'Dowd introduced the case. Code Compliance Director Gross submitted an update on the status of this case. He said they continue to work with Normandy Park; they have made progress in all categories, with some of them very close to compliance. He reviewed they initially requested 90 days to come into compliance; however, it was the Board's preference to have them report their progress to the Board each month. Citing the progress that has been made, the Code Compliance Director said he believes the City can justify another month's extension and hope to see more significant progress.

Dan Drake, Attorney for Normandy Park, declined to be sworn in, stating he does not have direct testimony to give. He said he just wanted to reiterate that they have spent a great deal of money bringing these things forward, and they request additional time to continue with the improvements. Wendy Savage, Property Manager, Normandy Park Apartments, testified they have pulled permits for three of the buildings for exterior AC work and have begun landscaping; they need to finish the landscaping and have nine more buildings that will need the exterior AC work. She confirmed for Chairman Pogorilich that the work is being done in-house, in order to accomplish it as inexpensively as they can.

Upon motion of Board Member Lear, seconded by Board Member Schmidt, the compliance deadline in **Case No. 10-0158, City versus Stuart J. Zook, Registered Agent, Normandy Acquisition LP**, was **EXTENDED** until **June 9, 2010**. Vote on the motion being: Chairman Pogorilich and Board Members Gibson, Lear, Newkirk, Ruyle, Schmidt and Urbas voting “aye”, no “nay.”

CASE NO. 05-1536 – City versus Nina Iacovella and Joseph H. Ficarrota - 11710 N. 51st Street-Section 25.780.8(a)(b)(c) - Required Buffering-Commercial.

Attorney O’Dowd presented an Affidavit of Compliance, prepared by Code Compliance Director Gross, dated May 12, 2010, which the Board accepted.

CASE NO. 09-2432 - City versus Natalie Anderson - 105 Deer Park Avenue - Section 8.830(a)(1)-Permits - When Required, 11.120.10 - Owners of Abutting Property to keep Rights-of-Way Clean and Sanitary, 25.755.10 – Duty to Maintain Swimming Pools, and 11.120.9 - Duty to Keep Premises Clean.

Attorney O’Dowd introduced an Affidavit of Compliance, prepared by Code Compliance Officer Borroni dated May 12, 2010, for compliance with Sections 8.830(a) (1) and 11.120.9, which the Board accepted.

CASE NO. 10-0194 – City versus Lydia T. Cuebas - 7601 Glades Court – Section 8.830(a)(1) – Work Without Required Permit.

Attorney O’Dowd introduced the case, stating the compliance deadline is May 12, 2010. Code Compliance Officer Gross stated the case is being handled by Officer Scrozzo. He noted the compliance deadline is midnight, but he does not believe they are making the progress they had hoped. He said they will report to the Board at the next meeting.

CASE NO. 10-0313 – City versus Thomas J. Urbanczyk - 1113 North Riverhills Drive - Section 11.135.2 – Sanitation-Grass/Weeds, 11.130.7(b) Unauthorized Accumulation, and 25.745.2(o)(2) – Posting of Street Numbers.

Attorney O’Dowd introduced an Affidavit of Non-Compliance, prepared by Code Compliance Officer Borroni, dated May 12, 2010, reflecting that as of April 22, 2010, the property is not in compliance with Sections 11.135.2, 11.130.7(b), and 25.745.2(o)(2), which the Board accepted.

OTHER BOARD ACTION:

Board Member Ruyle questioned why it appears the registered agent is cited and not the entity in many of these cases. The Attorney for the City responded that typically the Registered Agent is the individual responsible for accepting service on any matters initiated by the City. The Code Compliance Director added that the intent is to cite the entity, but the completed description of the entity includes the registered agent. Board Member Ruyle acknowledged he was “splitting hairs”; however, he would prefer the cases list the entity name first, then the registered agent. The Code Compliance Director stated that the case is generally laid out in the manner in which it is mailed, which is with the registered agent’s name listed first. Mr. Ruyle concluded if Legal Counsel has no problem with it, he does not.

NEW BUSINESS: There was no new business before the Board for consideration and action.

APPROVAL OF MINUTES:

Upon **motion** of Board Member Urbas, seconded by Board Member Newkirk, and unanimously carried, the **MINUTES** of the April 14, 2010, regular meeting were **APPROVED**.

There being no further business to come before the Board, the meeting was adjourned at 8:05 p.m.

Submitted by,

Melissa E. Small, MMC,
City Clerk