

**Town Of Grant-Valkaria
Code Enforcement Board Minutes
Tuesday, April 6, 2010 at 6:30 p.m.
4240 Highway U.S. 1, Grant Valkaria, FL 32949**

The meeting of the Town of Grant-Valkaria, Code Enforcement Board was called to order at 6:30 p.m. by Chairperson Terry Wolfe followed by the Pledge, a moment of silent meditation and roll call to the Board Members, with the following present:

Chairperson Terry Wolfe	Town Administrator Richard Hood
1 st Vice Chairperson Homer King	Town Attorney Karl Bohne
2 nd Vice Chairperson John Krupp	Administrative Assistant Jessica Williams
Board Member Royce Stifflemire	
Board Member Vincent Wilson	
Board Member Rod VanDerJagt, Alternate 1	

Chairperson Wolfe stated that Board Member Jeff Robertson sent an email stating that he would not be able to make it to the meeting due to being out of town for work. Chairperson Wolfe stated that Board Member Robertson would be excused since he contacted the Board. Chairperson Wolfe explained that since Board Member Mark Pagliarulo and Alternate Board Member Stephan Fay would not be excused since they had not contacted the Board.

APPROVAL OF MINUTES:

It was the Board's Consensus to approve the Code Enforcement Board Meeting Minutes of June 2, 2009.

Board Member King recused himself from voting on the next item on the agenda.

ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

There were no new nominations of Chairperson, 1st Vice Chairperson or 2nd Vice Chairperson.

Motion by Vice Chairperson King, second by Board Member Stifflemire and vote unanimous to retain Chairperson Terry Wolfe, 1st Vice Chairperson Homer King, and 2nd Vice Chairperson John Krupp for the remainder of the term.

NEW BUSINESS:

Town Administrator Hood asked if the Board would come back to agenda item H.1. He explained that he sent a notice to Ms. Zorn of Prudential Star Real Estate explaining that the request would be heard on April 6, 2010 at 7:00 p.m. Since there was an error on staff's part he asked that we give them an opportunity to be present.

- 1) Case No. 10-01- Sydney S/Claudette A Mc Intosh code violation on property located at 5726 Cypress Creek Drive. Violation of Code Chapter 114, Vegetation, Article II, Excessive Accumulations and Growths, Section 114-28. Declared Public Nuisance.

Chairperson Wolfe read the violation by title. Town Attorney Bohne swore Code Enforcement Officer Andre.

Code Enforcement Officer Andre stated that he received a complaint from a neighbor of the property located at 5726 Cypress Creek Drive. He explained that he has tried to contact the property owner with no response. Code Enforcement Officer Andre explained that he had visited the property yesterday and taken pictures for the Board. He then explained that the Chapter 114 Article II Section 28 states that "Property shall be mowed within 100 feet of any improved property."

2nd Vice Chairperson Krupp disclosed that he had made a visit to the property and saw the notice and the Brazilian Pepper trees that were growing over the property line. Board Member Stifflemire explained that he was a member of the Citizen on Patrol's and that he has seen all of the properties while on patrol and discussed them with his partner.

Chairperson Wolfe asked Code Enforcement Officer Andre if the property in question was vacant. Code Enforcement Officer Andre explained that the property was in fact vacant but had previously been cleared. Chairperson Wolfe then asked Code Enforcement Officer Andre if the property was in Cypress Creek. Code Enforcement Officer Andre explained that the property was in Cypress Creek. 2nd Vice Chairperson Krupp asked if this property was in phase two of Cypress Creek. Code Enforcement Officer Andre stated that it was in phase two of the Cypress Creek Subdivision.

Town Attorney Bohne explained to the Board that they must determine if the said property is in violation, if the property is found in violation the Board must come up with a cure period and set the fines which will begin if the property is brought into compliance within the cure period.

Motion by Vice Chairperson King, second by Board Member Stifflemire and vote unanimous finding Sydney S/Claudette A Mc Intosh in violation of the Chapter 114 Article II Section 28 because the property is overgrown within 100 feet of an improved property and said property has been previously cleared.

Chairperson Wolfe explained that the next step was to give the property owners a cure period. Chairperson Wolfe stated that the property owners were noticed on September 17, 2009 and given until September 27, 2009 to comply.

Motion by Chairperson Wolfe, second by 1st Vice Chairperson King and vote unanimous to give the property owners a 10 day cure period from the date of the order.

Chairperson Wolfe explained that the next step would be to levy the fines should the property owners not cure the problem within the 10 day cure period.

Motion by 2nd Vice Chairperson Krupp, second by Board Member Stifflemire and vote unanimous to assess a fine of \$25.00 per day if property is not brought into compliance within the ten day cure period continuing until the property is brought into compliance.

Town Attorney Bohne explained to the Board that if the Town has incurred any costs that Code Enforcement Officer Andre must then testify to those.

Code Enforcement Officer Andre explained the Towns costs included two certified letters at \$4.55 each and Code Enforcement Officer Andre had four and a half hours at \$19.45 per hour. He stated that the total cost to the Town was \$96.62.

Motion by Chairperson Wolfe, second by 2nd Vice Chairperson Krupp and vote unanimous to award the Town \$96.62 for the costs accrued as of the date of the order.

- 2) Case No. 10-02- Jennifer/Vida Narian Code Violation located at 5300 Coverbrook Lane. Violation of Code Chapter 114, Vegetation, Article II, Excessive Accumulations and Growths, Section 114-28. Declared Public Nuisance.

Chairperson Wolfe read the violation by title. Chairperson Wolfe asked if there were any other members that needed to be sworn in for testimony on this case. There were no other witnesses present for this case.

Code Enforcement Officer Andre explained that home located at 5300 Coverbrook has been abandoned and that a neighbor called him concerned with the growth on the property. Code Enforcement Officer Andre explained that since he has sent the notice the front portion of the property has been cut however the rear of the property remains overgrown. Chairperson Wolfe asked Code Enforcement Officer Andre if the violation would pertain to the entire property. Code Enforcement Officer Andre explained that this was correct. Code Enforcement Officer Andre explained that he had tried to contact the realtor prior to posting the property. He explained that he had a conversation with the realtor who explained that there was nothing she could do because the property was in foreclosure and she was just the listing agent. Chairperson Wolfe asked if the property was owned by the property owner or the bank. Code Enforcement Officer Andre explained that National City Bank was the lien holder and the property owner was Jennifer Narian. He then explained that he had noticed both parties.

Chairperson Wolfe explained that the Board must determine whether the property was in violation of Chapter 114, Vegetation, Article II, Excessive Accumulations and Growths, Section 114-28. Declared Public Nuisance.

1st Vice Chairperson King asked Code Enforcement Officer Andre if he had made his first visit to 5300 Coverbrook on January 12, 2010. Code Enforcement Officer Andre stated that was when the first letter was sent out to the property owner and the bank.

2nd Vice Chairperson Krupp disclosed that he had visited the property today and that the bushes in the entrance are overgrown and the back is worse. He stated that it seems that it has been vacant for some time.

Motion by 1st Vice Chairperson King, second by Chairperson Wolfe and vote unanimous that there is sufficient evidence to find the property located at 5300 Coverbrook Lane in violation of Chapter 114, Vegetation, Article II, Excessive Accumulations and Growths, Section 114-28. Declared Public Nuisance.

Motion by Board Member Stifflemire, second by 1st Vice Chairperson King and vote unanimous to give the property owners a 10 day cure period from the date of the order.

Motion by 2nd Vice Chairperson Krupp, second by Board Member Stifflemire and vote unanimous to assess a fine of twenty \$25.00 per day if property is not brought into compliance within the 10 day cure period continuing until the property is brought into compliance.

Code Enforcement Officer Andre stated that he had approximately 4.5 hours of time at his hourly rate \$19.45 per hour and two mailings at \$5.44 per mailing totaling \$98.60.

Motion by 1st Chairperson King, second by Chairperson Wolfe and vote unanimous to award the Town \$98.60 for the costs accrued as of the date of the order.

- 3) Case No. 10-03- Larry N/Joyce Thompson Paris Code Violation located at 5870 Medjool Road. Violation of Code Chapter 62 Land Development Regulation, Section 62-2257, Lighting Standards.

Chairperson Wolfe read the violation by title. Town Attorney Bohne swore in the following as witnesses: Jenny Seal, Jason Seal, Larry Paris, Chris King, and Keith Ryan.

Mr. Joseph Garbacik stated that he was representing Mr. and Ms. Paris and he had an objection because he believed that Board Member King should recuse himself from voting since the parties have had previous conflicts. He also stated that he had a business relationship with Board Member Pagliarulo outside of this hearing and believed Board Member Pagliarulo should also recuse himself from voting.

Town Attorney Bohne explained that 1st Vice Chairperson King was well advised that due to the prior instance that he should recuse himself from this vote; however Florida Law does not require a recusal from the deliberation. Town Attorney Bohne explained that Board Member Pagliarulo would not have to recuse himself from voting because he had a business relationship with the individual representing Mr. and Ms. Paris. He then explained that if Board Member Pagliarulo had a business relationship with Mr. Paris that would be a different story. Mr. Garbacik then stated that his second part of the objection was that the Board did not have the jurisdiction over a farm activity according to State Statute 823.14. Mr. Garbacik then read State Statute 823.14 into the record. Mr. Garbacik also read Attorney General Opinion 2006-07. Attorney Bohne stated that to say that a local jurisdiction has no authority over a farm is not 100

percent true. Town Attorney Bohne then explained that the Attorney General has stated in many instances certain zoning codes must be complied with. He stated that there is Florida Case law that interprets Statute 823.14 concerning the adoption of a rule ordinance or regulation as opposed to one that is already in existence. He continued by stating that this particular provision of the county code was in existence prior to the Donkey Love Ranch becoming a bona-fide farm. He explained that Town of Grant-Valkaria did not adopt anything new when the Town was incorporated by Charter; the Town adopted the County code that was already in existence. Town Attorney Bohne then explained that Statute 823.14 states that the jurisdiction cannot regulate a farm activity and that the lighting was not a farm activity. Town Attorney Bohne then stated that it was his opinion that the provision of Statute 823 does not prohibit the Town from proceeding with this matter or prohibit the Town Code Enforcement Board from taking jurisdiction over this issue. Chairperson Wolfe stated that she didn't believe that lighting on a farm does not allow the farm to operate. Mr. Garbacik then responded. Joe Garbacik stated that he needed to call witnesses. Town Attorney Bohne stated that prior to proceeding with witnesses that Code Enforcement Officer Andre needed to be able to state the case. Code Enforcement Officer Andre stated the case on behalf of the Town. He presented evidence of the violation. Joe Garbacik stated that he had an objection to Mrs. King's statement because she is married to one of the Board Members and her testimony should be stricken from the record. Town Attorney Bohne explained that there is no prohibition either in chapter 119 or in the public records law that prohibits a spouse from testifying. Town Attorney Bohne explained that again it is not a conflict because it is not coming before her Board. Chairperson Wolfe stated that the testimony would be allowed. Mr. Garbacik asked if Mrs. King was familiar with perjury. Mr. Garbacik asked Mrs. King questions. Town Attorney Bohne explained that Mr. Garbacik would be able to enter his evidence; however the hearing had to be done procedurally correct. The Town Code Enforcement Officer has to prove to the Board a prima facia case. If the Board believes that there is enough evidence to prove that that this is a prima facia case then the respondent will be given a chance to then prove his case. Mr. Garbacik then asked Mrs. King follow up questions. Jason Seal testified. He stated that what Mr. Andre statement as to what happened on his visit was correct. Mr. Seal explained that on the first floor the lighting does cast a shadow even with all the trees. He explained that Mr. Paris requested him to write a letter stating that they did not complain and that the lights being turned inward would be sufficient. Mr. Garbacik cross examined the witness. Board Member King then asked Mr. Seal some questions. Mr. Garbacik showed several photos to the Board and asked that they be entered in to the record. Board Member King asked Mr. Garbacik if he was an attorney. Mr. Garbacik stated that he was a member of the Donkey Love Ranch.

Town Attorney Bohne asked for a brief recess for the Clerk. Chairperson Wolfe called for a five minute break at 8:00pm and stated that this case should not be discussed by the Board during this break. Chairperson Wolfe called the meeting back to order at 8:05 pm.

Chairperson Wolfe brought the item back to the Board. Alternate Board Member VanDerJadt explained that he believed that one of the lights must have a leak in the case and this should be able to be fixed in less than 45 days. Board Member Pagliarulo stated that he had a suggestion to possibly turn off the couple of lights that are affecting the Seal's. Board Member Pagliarulo asked if they could place the lights closer to the property line and face them toward the farm

instead of facing them outward. Mr. Paris stated that for security reasons he cannot turn the lighting off. Chairperson Wolfe explained that the second portion of the question asked if the lighting be placed on the perimeter of the property facing inward. Mr. Paris stated that it is extremely expensive to move the poles. Town Attorney Bohne asked that the Board move the item forward. Board Member King stated that if found in violation they would be given a cure period. Town Attorney Bohne stated that he needed a consensus from the Board to see if they could move forward. Board Member Krupp stated that it takes a lot for a neighbor to come in and complain about lighting. Board Member Krupp explained that he did not understand why the gentleman couldn't resolve the issue.

Motion by Board Member Krupp, second by Board Member Wilson to table the issue and subtract the 14 days that have passed from the suggested 45 and give the Paris' 31 days to resolve the issue, motion failed (4 Ayes: Stifflemire, Pagliarulo, Krupp, Wilson; 2 Nays: Wolfe, King) due to lack of five affirmative votes.

Town Attorney Bohne stated that Mr. Garbacik was now allowed to continue cross examine. Mr. Garbacik asked Mr. Seal some follow up questions. Mr. Garbacik began showing the Board photos that he stated were taken along Medjool Road last evening at between 10:00 p.m. and 11:00 p.m. Chairperson Wolfe stated that the photos looked very similar and none of the photos were labeled. Code Enforcement Officer Andre also showed photos to the Board and stated that the photos were taken at around 9:45 p.m. He explained that the two lights are the lights in question. Town Attorney Bohne asked if Code Enforcement Officer Andre had any other testimony. Town Attorney Bohne asked if Mr. Garbacik would like to cross examine Code Enforcement Officer Andre. Mr. Garbacik asked the Code Enforcement Officer some questions. Town Attorney Bohne asked if there was any other evidence to be provided to the Board. Code Enforcement Officer Andre stated that there was nothing further. Town Attorney Bohne stated that the matter is then brought back to the Board to determine if it is violation Chapter 62 Land Development, Section 62-2257, Lighting Standards. Board Member Krupp asked Code Enforcement Officer Andre if he believed that the photos accurately show the glare. Code Enforcement Officer Andre stated that he had seen the glare in the Seal's bedroom and that was all he could testify to. Chairperson Wolfe stated that it is now up to the Board to determine if there is enough evidence to prove a prima facia case. Board Member Pagliarulo stated that the Board should take a field trip.

Motion by Board Member Pagliarulo to take a field trip to the farm to see the affect the lighting is having on the property, motion failed due to lack of second.

Town Attorney Bohne stated it was a Board determination as to whether or not to perform a site visit. Alternate Board Member VanDerJagt stated that Mr. Andre testified, Mr. Seal seems to be a reasonable person, and he personally believes there is enough evidence of a violation.

Motion by Board Member Stifflemire, second by Chairperson Wolfe and vote unanimous that there is enough evidence to prove a prima facia case (King abstained from voting and Form 8B Memorandum of voting conflict is on file).

Mr. Garbacik stated that regardless of the Board's decision they would be appealing. Town Attorney Bohne stated that this comment wasn't necessary and for the record that the Town would defend it. Mr. Garbacik asked Town Administrator Hood some questions. Town Attorney Bohne stated that since this is a document that is not under oath and the person that authored it is not present for cross examination that the Board should take that into consideration. Mr. Garbacik asked Mr. Paris some questions. Town Attorney Bohne explained that Board takes notice that number one Mr. and Mrs. Paris operate a farm on the property, and number two Mr. and Mrs. Paris have an agricultural exemption on the property. Town Attorney Bohne stated that the lighting was for security and Mr. Paris has made complaints that he has had issues with the safety of his animals. Town Attorney Bohne stated that Mr. Paris is allowed to have security lighting and that it is necessary but they must take the neighbors into consideration. Town Attorney Bohne also asked Mr. Paris if he disputed the fact that the lighting is shining into the Seal residence. Mr. Paris stated that this statement is correct. Alternate Board Member VanDerJagt stated that there was enough evidence presented by Code Enforcement Officer and that he didn't believe a site visit was necessary. 2nd Vice Chairperson Krupp stated that Code Enforcement Officer Andre's testimony was adequate and a site visit wasn't necessary. It was the Board's consensus not to make a site visit. Mr. Garbacik asked if the Board was declining to take this into evidence. Town Attorney Bohne stated that it wasn't customary but not unusual to take a site visit and this Board has determined that it would like to use documentary evidence and testimony that was presented before them. Mr. Garbacik asked Mr. Seal some additional questions. Chairperson Wolfe called for a brief recess at 9:30 pm. Chairperson Wolfe called the meeting back to order at 9:35 pm.

Mr. Garbacik stated that he would like to reestablish that they object to the Kings record. Mr. Garbacik stated that the pictures clearly show the lighting on Medjool Road and they are similar to those taken by Code Enforcement Officer Andre. Mr. Garbacik then stated that they question the jurisdiction on the Board. He stated that regardless of what the Board feels about his presentation he is there to protect the farm. Mr. Garbacik stated that there was a letter from Mr. Archibald whom was an expert on lighting and a reasonable person. Mr. Garbacik continued by stating that the rules of 62-2257, Lighting Standards do not apply. Mr. Garbacik stated that the case law mentioned by Town Attorney Bohne was not present and in his years of research he has never found one that contradicts Statute 823.14. Mr. Garbacik stated that they are still willing to work with the Seal's to resolve the issue and be neighborly. Mr. Garbacik stated that he moved for dismissal. Town Attorney Bohne stated that the matter is before the Board and that the Board must determine if there is a violation, the time to cure, the fines and costs if there is a violation.

Motion by Chairperson Wolfe, second by Board Member Stifflemire and vote unanimous that there is sufficient evidence to find the property located at 5870 Medjool Road in violation of Chapter 62 Land Development Regulation, Section 62-2257, Lighting Standards (King abstained from voting and Form 8B Memorandum of voting conflict is on file).

Motion by Board Member Pagliarulo, second by 2nd Vice Chairperson Krupp, and vote unanimous to give the property owner a 30 day cure period from the date of this order (King abstained from voting and Form 8B Memorandum of voting conflict is on file).

Motion by Chairperson Wolfe, second by 2nd Vice Chairperson Krupp and vote unanimous to assess a fine of 25 dollars per day if property is not brought into compliance within the 30 day cure period continuing until the property is brought into compliance (King abstained from voting and Form 8B Memorandum of voting conflict is on file).

Code Enforcement Officer Andre stated that he had approximately 5 hours of time at his hourly rate \$19.45 per hour and two mailings at \$5.44 per mailing totaling \$108.33.

Motion by Chairperson Wolfe, second by Board Member Stifflemire and vote unanimous to award the Town \$108.33 for the costs accrued as of the date of the order (King abstained from voting and Form 8B Memorandum of voting conflict is on file).

Mr. Garbacik stated that they are addressing the Board that they will be appealing. Mr. Garbacik also stated that he would like a copy of all of the recording and transcript of the meeting. Mr. Garbacik stated that by law the Town must record the meeting and create these minutes. Town Attorney Bohne explained that if the individual wants verbatim transcript of the meeting they must make arrangements to bring a court reporter which is stated on the agenda. Town Attorney Bohne stated that by law the Town must only take minutes of the meeting. Town Attorney Bohne explained that a copy of the public record would be provided. Mr. Garbacik explained that again they would be appealing.

4) Discussion/Action Re Request by Ms. Barbara Zorn, Prudential Star Real Estate, for reduction of fines at property located at 3830 Valkaria Road (Hood)

Town Attorney Bohne explained that to date the fines accrued are \$ 26,944.20 and that the property appears to be foreclosed. Town Attorney Bohne explained that if the property had been foreclosed our lien is minor in comparison to the first mortgage and that he suggests that a reduction in fine be considered by the Board. Chairperson Wolfe asked if a Code Enforcement Board lien was placed on the property. Town Attorney Bohne stated that a lien was placed on the property. Chairperson Wolfe then asked if a lien was placed on the property would it have to be paid prior to selling. Town Attorney Bohne stated that no our lien is probably gone. If our lien was filed after the lis pendens was filed we take subject to the foreclosure and we don't have a lien. Town Attorney Bohne stated that it would be in the Towns best interest to entertain a reduction in the lien. Town Attorney Bohne stated that the goal of code enforcement is compliance but we do have time and costs involved.

Motion by 2nd Vice Chairperson Krupp to reduce the fines to half, motion fails for lack of second.

Motion by 2nd Vice Chairperson Krupp to reduce the fines to \$5000.00, motion fails due to lack of second.

Motion by 1st Vice Chairperson King, second by Chairperson Wolfe and vote unanimous to reduce the fine to \$10,000 if paid within 60 days, if not paid within the 60 day time period time the reduction is null and void and the \$26,944.20 fine becomes reinstated.

Motion by 1st Vice Chairperson King, second by Chairperson Wolfe and vote unanimous to adjourn the meeting at 9:57pm.

(Signature on file)

Terry Wolfe, Chairperson

ATTEST:

(Signature on file)

Jessica Williams, Administrative Assistant