

**CODE ENFORCEMENT BOARD
MINUTES
Thursday, May 19, 2016**

MINUTES ARE NOT VERBATIM

A meeting of the Okaloosa County Code Enforcement Board was held Thursday, May 19, 2016 at 4:00 p.m. at the Okaloosa County Administration Building, 1250 Eglin Parkway N., first floor Commissioner's Chambers, Shalimar, Florida. Board members in attendance were Spence King, Skip Miller, Mike Banks and Dennis Chavez. Caralee Gibson, Fay Seketa and Cathy Alley were not present. Assistant County Attorney Kerry Parsons was also present.

Growth Management staff in attendance were Lisa Payton, Code Enforcement Supervisor; and Teresa Mullins, Administrative Assistant.

1. ROLL CALL

Teresa Mullins conducted roll call.

2. APPROVAL OF MINUTES OF January 21, 2016

Motion to approve the minutes as written made by Skip Miller, Second by Mike Banks; approved unanimously.

3. SWEARING IN OF ALL SPEAKERS

Ms. Mullins swore in those wishing to address the Board.

4. ANNOUNCEMENTS: Assistant County Attorney, Kerry Parsons

Lisa Payton stated that that staff is requesting to move Attorney Parson's presentation to the end of New Business.

5. OLD BUSINESS:

A. 806 Oakridge Road, Fort Walton Beach Update.

Ms. Payton reminded the Board that this was an issue involving a shed that was placed in the County Right-of-way, at the January 21, 2016 meeting the Board approved the following motion:

Motion to give 10 days to remove the offending structure and if it is not removed, a fine of \$250.00 per day effective today if not removed made by Skip Miller; Second by Fay Seketa; approved unanimously.

Ms. Payton stated that the shed was removed within the time limit given by the Board and the property is now in compliance and there was no need to place a lien on the property.

B. 505 Scott Lane, Fort Walton Beach Update.

Ms. Payton reminded the Board that this issue involved a mobile home that was moved onto the site without permits and without power. Ms. Payton stated that the Board, at the January 21, 2016 meeting approved the following motion:

*Motion that we send notice to the property owner that he has 5 days to bring this home into compliance or remove it and a \$250.00 a day fine if he chooses not to bring it into compliance or remove it made by Skip Miller;
Second by Cathy Alley; approved unanimously.*

Ms. Payton stated that a permit has been purchased; however, they have not yet finished setting the mobile home up properly. Ms. Payton further stated that the owner has had some difficulty in getting the tenants out of the mobile home; however, he has six months to get the mobile home set up correctly and get his inspections scheduled.

Mike Banks asked staff who pulled the permit.

Ms. Payton stated that a mobile home installer from Pensacola had pulled the permit for the mobile home.

A brief discussion ensued.

6. NEW BUSINESS:

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| a. CEB CASE #16-400168 | James L. Brahier & Belinda Ziegler |
| Location of Violation: | 1340 Charlie Day Road, Baker |

**Ordinance Violation and Public Nuisance.
Okaloosa County Land Development Ordinance 91-1 as amended, Chapter 6,
Construction Standards, Section 6.02.01 Construction Codes, 11 (c-d); Chapter 9,
Operational Performance Standards, Section 9.03.05 Public Nuisance, 1 and 3.**

Ms. Payton stated that in October of 2015 staff received the complaint during a Board of County Commissioner's meeting. Ms. Payton noted that a discussion of the proposed Nuisance Abatement Ordinance was being held and the complaint regarding an abandoned, burned-out mobile home on Charlie Day Road in Baker was provided during an open forum during that portion of the meeting. Ms. Payton stated that staff received several complaints regarding public nuisances at the same time. Ms. Payton informed the Board that she and a Code Enforcement officer drove out to the site, however, due to the excessive overgrowth, they were unable to see the mobile home from the road despite driving up and down the road several times. Ms. Payton stated that they were only visibly find the mobile home location by looking at the property from the County property located to the rear of the mobile home site. Ms. Payton further stated that once they'd located the mobile home, they were able to get through the overgrowth in the Right-of-Way on Charlie Day Road to clearly see the burned-out mobile home sitting in the middle of a field. Ms. Payton noted that the entire site was debris free and clean with the sole exception of the burned mobile home. Ms. Payton stated that staff spoke with a neighbor who provided contact information for Ms. Ziegler who had remarried and moved to Opp, Alabama. Ms. Payton stated that staff spoke with Ms. Ziegler who informed them that she would speak to her husband and see what could be done

as three acres of that property had been given as collateral for the mobile home. Ms. Payton further stated that staff spoke with Ms. Ziegler's husband, Mr. James Brahier in November of 2015, and Mr. Brahier informed staff that they had been in court over that property, that there was a *lis pendens* on the property but they were willing to clean the property up and hoped to get a buyer for it. Ms. Payton stated that staff provided them with time to take care of their business and get the property into compliance and informed them that if no progress was made, they would have to appear before this Board. Ms. Payton further stated that, upon later revisiting the site, staff found the situation to be unchanged; therefore, this issue was scheduled to be heard by this Board. Ms. Payton informed the Board that both Ms. Ziegler and Mr. Brahier are both present and willing to address the Board.

Chairman King asked for staff's recommendation.

Ms. Payton stated that staff was requesting the Board give them 30 days to bring the property into compliance with a fine of \$250.00 per day retroactive to today if the property isn't brought into compliance within the time limit set by the Board with a clean and lien order included.

Ms. Belinda Ziegler addressed the Board, stating that she has a gentleman who is aware that the damaged mobile home is on the property, and is willing to buy the land and remove and dispose of the mobile home.

Chairman King asked Ms. Ziegler to provide the Board with a timeframe for all of this to occur.

Mr. James Brahier stated that the gentleman is ready to purchase the property now and has all the necessary paperwork, including the title search, in hand so they should be able to close within staff's recommended 30 days.

Mike Banks asked Counsel what would occur if the Board provided 30 days but the property sold before that 30 days was up.

Attorney Parsons stated that if the Board finds that the property is in violation today, then the 30 days would stand; however, if the Board does not take action today, and the property changes hands, the process would have to start all over with the new owner. Attorney Parsons recommended that if the Board takes action on this property today, a copy of this Order should also be sent to the potential property owner. Attorney Parsons noted that any time period given by the Board today would stand with the property.

Chairman King asked staff when they were first apprised of the non-compliant property.

Ms. Payton stated that the complaint was made on October 20, 2015.

Skip Miller stated that he was concerned about limiting the time to thirty days, given the issues that can crop up at the last minute in closing on properties and he would feel better if 60 days was allowed.

A brief discussion ensued.

Motion to give 60 days to remove the mobile home and if it is not removed then it becomes a clean and lien situation along with a fine of \$250.00 per day retroactive to today and that notice of this order be made to the potential buyer made by Skip Miller; Second by Mike Banks; approved unanimously.

A brief discussion ensued.

Dennis Chavez warned Ms. Ziegler and Mr. Brahier that if they didn't meet the terms of the Board's order, the fine of \$250.00 per day for 60 days retroactive to today would amount to \$15,000.00 and suggested that if the sale fell through it would be in their best interest to get the burned out mobile home off the site themselves.

**b. CEB CASE #16-360993
Location of Violation:**

**TJ Broxson & Debra J. Chappell
4819 Gilmore Road, Holt**

Ordinance Violation and Public Nuisance.

Okaloosa County Land Development Ordinance 91-1 as amended, Chapter 6, Construction Standards, Section 6.02.01 Construction Codes, 11 (c-d); Chapter 9, Operational Performance Standards, Section 9.03.05 Public Nuisance, 1 and 3.

Ms. Payton stated that Code Enforcement staff have dealt with this issue, on and off, since 2010. Ms. Payton further stated that each time staff went out to the site, Mr. Broxson would do just enough to satisfy the Code at that time. Ms. Payton noted that, when staff first began dealing with Mr. Broxson, the Code at that time allowed tarps to be used to cover up unsightly issues; however, the current Code requires that these unsightly issues must be kept behind a fence, in a storage shed or in a garage, etc. Ms. Payton stated Mr. Broxson is a hoarder who routinely brings discarded items to his property, such as several unregistered, inoperable vehicles. Ms. Payton further stated that staff believes that Mr. Broxson is scrapping metal for profit. Ms. Payton stated that staff has received complaints regarding excessive rats and mosquitos from Mr. Broxson's neighbors. Ms. Payton noted that, when driving past the site, the debris isn't really visible from the road or the Right-of-Way and Mr. Broxson has "No Trespassing" signs posted which prevents staff from entering the site unless invited by Mr. Broxson. Ms. Payton stated that Mr. Broxson invited staff onsite when they visited recently, and staff spoke with both Mr. Broxson and his daughter. Ms. Payton further stated that staff discussed the situation and agreed that Mr. Broxson is a habitual hoarder, and that something must be done to resolve the situation permanently. Ms. Payton stated that research showed that the property was not a homestead property when this issue first presented in 2010. Ms. Payton further stated that Mr. Broxson's daughter asked for help from the County to get the site into compliance; however, staff had to inform her that the County will not go onto private property in situations like this. Ms. Payton stated, in the past, staff has provided neighborhood clean-ups by taking care of the cost of the roll-offs and tipping fees, up to 4 a year; however, funds for those clean-ups was removed from the Code Enforcement budget. Ms. Payton further stated staff is now seeking donations from contractors, etc. to pay for the roll-offs and tipping fees so that these clean-ups can continue; however, staff hasn't had much success this year. Ms. Payton stated that such a 'neighborhood clean-up' could solve the trash and debris problem at Mr. Broxson's site. Ms. Payton further stated that Mr. Broxson is a habitual offender and staff believes that this situation will not be resolved easily.

Chairman King asked if Mr. Broxson and his daughter were living at the site.

Ms. Payton stated that, at a recent visit to the site, Health Department staff was also present. Ms. Payton further stated that there was a person living in the RV on site. Ms. Payton stated that, due to the improper electrical hook-up as well as the illegal sewer situation wherein the sewage was being dumped into a barrel in the ground, the Health Department wrote them up, and disconnected the power. Ms. Payton further stated that, upon staff's most recent visit to the site, the RV is now empty and untenanted. Ms. Payton stated that Mr. Broxson does live on the site, noting that he is 82 years old. Ms. Payton further stated that, while Code Enforcement staff believes that the state of this property meets the definition of egregious; she is not sure that the Board of County Commissioners will allow, or a contractor would even agree to go onto a site where someone is living and remove their personal property even if there is no monetary value to it, and it appears to be nothing more than trash. Ms. Payton noted that the pictures of the site provided to the Board show the property looking better than it has over the past 5 years.

Chairman King asked for staff's recommendation to the Board.

Ms. Payton stated that is recommending 30 days, because Mr. Broxson's daughter wants to help him clean the site up; however, they're lacking the funds to do so and Code Enforcement does not have funds available to help them out.

Chairman King asked if staff knew who owned the property.

Ms. Payton stated that Mr. Broxson & Ms. Chappell own the property.

Mr. Miller asked Ms. Payton if staff knows what the market value of the property is.

Ms. Payton stated that the Property Appraiser has the land valued at about \$10,000.00 and gives no value at all to the building(s) on the site. Ms. Payton stated that this situation is one that could be sent to the Board for Nuisance Abatement; but staff is unsure if the Board would approve it.

Chairman King asked Ms. Payton for staff's recommendation.

Ms. Payton stated that staff is recommending 60 to 90 days to get something done and perhaps then a fine, especially given the low value of the land and the fact that a fine of \$250.00 per day for 30 days would equal $\frac{3}{4}$ of the value of the land.

Chairman King stated that he's not sure that a fine would work in this situation given that a typical Board fine could quickly accrue to an amount that is higher than the market value of the land. Chairman King asked staff if the Code Enforcement fines fund held enough to pay for a roll-off and tipping fees for this property and then charge the owner for the cost. Chairman King noted that he didn't believe putting a fine on this particular property would accomplish anything.

Ms. Payton stated that the Board of County Commissioners would have to approve any such expenditure. Ms. Payton further stated that, at one time, staff could have set it up as a "neighborhood clean-up" site; however, those funds were removed from the Code

Enforcement budget. Ms. Payton stated that staff has also been unable to find anyone who is willing to donate the costs of the roll-offs, etc.

Mr. Banks stated that putting a 30 day limit in place, not to get the entire site cleaned up, but rather to show that they are actively working to get it cleaned up might be more of an incentive. Mr. Banks further stated that if they return to this Board after 30 days and show that they are making an “honest effort” to clean up the site, then the Board could extend more time so long as they keep at it. Mr. Banks stated that he didn’t believe the whole site could be cleaned up in 30 days unless a front end loader or other large construction equipment was used. Mr. Banks further stated that they could appear before this Board 3 or more times, so long as they keep working at it, and the hopeful result eventually would be compliance with no fine owed.

Chairman King noted that the property owner is elderly and has lived for a very long time this way, therefore it is unlikely that he’ll make a change at this late date.

Ms. Payton noted that Mr. Broxson’s daughter has asked for help with the situation; however, Code Enforcement staff has been unable to provide the kind of help that is needed up to this point in time. Ms. Payton further stated that staff is still searching for donations; otherwise it will take the approval of the Board of County Commissioners for Code Enforcement to help using the Code Enforcement fines and fees fund.

Chairman King stated that he believes that the purpose of this Board is to remove public nuisances; however, he also believes that, in this case, a fine will do nothing to solve the problems and gain compliance. Chairman King further stated that, if there was a way to bring this to the Commissioners to get it cleaned with the charge for the cleaning to go to the owner.

Mr. Miller stated that he sees a problem with placing a dumpster on the site, given that most of the debris is not the type that can go into a C & D landfill, therefore the cost of the dumpster & tipping fees would be pretty expensive. Mr. Miller further stated that, as far as the abandoned vehicles are concerned, there are companies who will pay for cars, running or not, and come pick them up.

Mr. Chavez stated that he agrees with Chairman King that a fine may not be the best way to handle this situation, especially as the fine could quickly exceed the value of the land.

A brief discussion ensued.

Attorney Parsons stated that the Board could give 60 days as described and then at the next meeting motion to send the issue to the Board per the Nuisance Abatement Ordinance.

Ms. Payton stated that she would meet with the Growth Management Director to draft a request to the Board of County Commissions for the release of Code Enforcement funds to help pay for the dumpster, etc.

Motion that we give them the 60 days and within that 60 days they need to show Code Enforcement that they’re making an honest effort to bring the property into compliance, and have this issue appear on the next meeting agenda with pictures showing that they’re making an honest effort, and if they’re not making an honest effort then it would go to a fine of

\$250.00 per day retroactive to today and would go to the Board of County Commissioners for a clean and lien made by Mike Banks; Second by Skip Miller; approved unanimously.

7. OTHER BUSINESS:

A. Case Load Update

Ms. Payton provided the following information from the second quarter of 2015/2016 and thus far:

448 cases, of which 409 are closed and 37 remain open.

Ms. Payton stated that staff has issued 2 citations for unlicensed/unpermitted work. Ms. Payton further stated that one unlicensed case is being handled by the State's Attorney as that individual had been prosecuted earlier for unlicensed activity in South Florida. Ms. Payton further stated that staff is also looking into the contractor he worked with for aiding and abetting. Ms. Payton stated that staff issued 1 citation for unpermitted activity, which has been paid. Ms. Payton further stated that staff has dealt with 137 contractor issues. Ms. Payton further stated that staff has dealt with 33 vehicle/vessel issues, as well as 142 public nuisance issues, 41 vacant property issues and 93 zoning issues. Ms. Payton provided the following:

Total fines assessed in the 1st quarter: \$4,400.00

Total fines collected in the 2nd quarter: \$ 200.00

Ms. Payton noted that 1 of the unlicensed has been put on a payment plan.

Ms. Payton stated that Code Enforcement staff would be out working this coming Saturday working primarily in the North end of the County.

A brief discussion ensued.

Ms. Payton informed the Board that Mr. Miller's, Ms. Gibson's & Chairman King's terms on the Board were up for renewal and asked Mr. Miller and Chairman King if they were willing to serve another 3 year term on the Board.

Chairman King and Mr. Miller both agreed to serve another 3 year term on the Board.

A brief discussion ensued.

Assistant County Attorney, Kerry Parsons:

Attorney Parsons informed the Board that she was going to briefly explain some of the key points regarding the Sunshine Law, Public Records and the Code of Ethics. Attorney Parsons began with the Sunshine Law, explaining its location and requirements, stating that any time 2 or more members wish to communicate or discuss something that has or will appear before the Board, it must be in an open, advertised meeting for which minutes are taken. Attorney Parsons noted that communication under the Sunshine Law is very broad and includes all types of communication, such as talking, texting, emailing and even, were such a thing used, smoke signals. Attorney Parsons noted that even asking staff to pass a message to another Board member regarding an issue that is or might come before the Board

is also a violation. Attorney Parsons stated that violations of the Sunshine Law can result in misdemeanors, civil fines and even imprisonment in some cases.

Attorney Parsons informed the Board that their meetings are Quasi-Judicial in nature, meaning that this Board can actually take action and as a result there are some due process matters that affect both this Board and the individuals who appear before this Board. Attorney Parson stated that, as regards those brought before this Board accused of violating the Code, they have the right to speak if they choose and they have the right to know if any member of the Board had any ex-parte communications regarding their situation. Attorney Parsons continued, explaining that ex-parte communications include such things as talking to staff, a neighboring property owner or even the proposed violator. Attorney Parsons noted that if any such communication happens, notify the Board Attorney present and it can then be disclosed during an open meeting by explaining what was communicated. Attorney Parsons cautioned that ex-parte communications, even when disclosed in an open meeting, would open the Board member involved up to cross-examination. Attorney Parsons suggested that the Board members best course of action might be to blame the County Attorney's Office for their refusal to participate in any ex-parte communication.

Attorney Parsons stated that Florida Statutes, Chapter 119 requires that there is a right to all actions taken during public business, noting that the law is very broad and encompasses any and all records, such as meeting minutes, email, notes and telephone transcripts or logs, if any are taken. Attorney Parsons stated that any such documents, such as emails sent by Board members to staff or counsel qualify as public records. Attorney Parsons stated that any attempt to hide or destroy documents can result in fines, criminal prosecution and imprisonment.

Attorney Parsons stated that Chapter 112, Florida Statutes, which includes the Code of Ethics, was adopted by the legislature and applies to all public bodies in Florida excepting only the Florida Legislature itself which has its own ethics law. Attorney Parsons further stated that the Code of Ethics establishes standards of conduct for all public officials, both elected and appointed. Attorney Parsons touched on several points of the Code of Ethics some of which are pertinent to this Board:

- Solicitation of or acceptance of gifts, i.e. bribery
- Unauthorized compensation, i.e. compensation for a particular vote or quid pro quo
- Misuse of Public Position, i.e. using position to coerce the behavior of another
- Disclosings or use of certain information, such as disclosing knowledge of bids
- Doing Business with your own agency
- Engaging in conflicting employment or contractual relationships

Attorney Parsons stated that a major issue for this and other Boards in the Code of Ethics deals with Conflicts of Interest. Attorney Parsons further stated that the Code of Ethics requires that a Board member vote if they are present at a meeting, excepting only under special circumstances wherein a Board member has a Conflict of Interest as defined in the

Code of Ethics. Attorney Parsons stated that there are 3 basic reasons for a Conflict of Interest:

- If there is a gain or loss that the Board member would suffer based on the vote.
- If a relative of a Board member will suffer a gain or loss based on the vote.
- If a business entity with which the Board member is involved will suffer a gain or loss based on the vote.

Attorney Parsons stated that, in the event that a Board member has a Conflict of Interest, they can fill out a ***Form 8B Memorandum of Voting Conflict for County, Municipal and Other Local Public Officials*** and disclose during the meeting that the Board member has a Conflict of Interest and will not be voting. Attorney Parsons further stated that the Form 8B must be given to the Recording Secretary and recorded as part of the public record. Attorney Parsons noted that the definition of relative in the Code of Ethics is limited to a spouse, parents and children.

Attorney Parsons touched briefly on Financial Interest forms, noting the fine involved if the form is not filled out and filed in a timely fashion.

Mr. Banks stated that he, along with several other contractors, calls Code Enforcement when he sees a Code violation while out working, and asked counsel if that action would require him to abstain from voting if an issue that he called in later appears before this Board.

Attorney Parsons that just driving by, seeing and calling in violations is no problem, unless he is using his position to coerce the violator to do something.

A brief discussion ensued.

8. ADJOURN

Motion to adjourn made by Skip Miller; second by Dennis Chavez; approved unanimously.

Prepared by:


Teresa Mullins, Administrative Assistant II
5.24.16