**CODE ENFORCEMENT BOARD**

**MEETING MINUTES**

**Wednesday, October 19, 2022**

*(several areas of this recording were interrupted by a muffled static)*

# MINUTES ARE NOT VERBATIM

A meeting of the Okaloosa County Code Enforcement Board was held Wednesday, October 19, 2022 at 4:00 p.m. at the Okaloosa County Administration Building, 1250 Eglin Parkway, first floor Commissioner’s Chambers, Shalimar, Florida. Chairman Mike Banks, Caralee Gibson, Mark Siner, and Dana Cawthon attended the meeting. Dennis Chavez was unable to attend.

Growth Management staff in attendance: Lisa Payton, Code Enforcement Supervisor; Lynne Oler, Code Enforcement Administrative Assistant; Carlos Jones, Code Enforcement Officer; and Steve Kenney, Code Enforcement Officer. Okaloosa County Attorney, Lynn Hoshihara, was also in attendance.

**1.** **PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

Ms. Lynne Oler conducted roll call.

**3. SWEARING IN OF ALL SPEAKERS**

Ms. Lynne Oler swore in Lisa Payton, Code Enforcement Supervisor; Carlos Jones, Sean Donaldson, Steve Kenney - Code Enforcement Officers, and all others that wished to speak at this meeting.

**4. APPROVAL OF MINUTES – September 20, 2022 Meeting**

*Motion to approve the minutes made by Caralee Gibson, second by Mark Siner, approved unanimously.*

**5. ANNOUNCEMENTS:**

There were none.

**6. PUBLIC COMMENTS:**

There were none.

**7. OLD BUSINESS** - None

**8. NEW BUSINESS:**

 **A. CEB CASE #22-517117 Trustee Joe A. Allinder Jr.**

**Location of Violation: 608 Vermont Avenue, Fort Walton Beach**

Okaloosa County Code of Ordinances, as amended, Chapter 11, Health & Sanitation, Article III, Nuisances, Division 3, Section 11-136, Public Nuisances; and Appendix E, Chapter 6 Development Design Standards, Sec 6.00.04 – Regulations (7) Travel Trailers, Campers, and Motorhomes.

Steve Kenney, Code Enforcement Officer for Okaloosa County, stated that he received a complaint about people living in a camper and trash strewn throughout the property. The Sheriff’s Office had been out to the property and made a drug arrest prior to his visit to the property. The person living in the RV was the one arrested. Mr. Kenney said that his investigation showed that there was someone occupying the RV, and there was trash throughout the property. Mr. Kenney contacted the Health Department in relation to the sewage on the ground. On May 24th, he mailed out a Notice of Violation, and it was signed for on June 4th. Mr. Kenney said he was contacted by Joe Allinder, the Trustee for the trust that owns the property, on June 22nd, who asked him if he would do a follow-up inspection. At that time the RV had been removed, but the trash still remained in the front yard and the back yard. Mr. Kenney emailed some pictures and Mr. Allinder said he would have his niece clean the property. We received some emails about the trash and on July 19th Mr. Allinder said he would come up from Naples, where he resides, and take care of the violations. On August 4, 2022, Mr. Kenney said he inspected the property and the trash remains at which point he requested this issue come before the Board. The property was brought into compliance on the 14th of October. Mr. Kenney said Staff’s recommendation is for finding that there was a violation of noncompliance, but there be no fine since the property was brought into compliance, and that the administrative fees be paid.

*Caralee Gibson made a motion that administrative fees are to be paid, but there are no fines because the property was brought into compliance, but not in the allotted time. Mr. Mark Siner seconded the motion. The motion passed unanimously*.

**B. CEB CASE #22-517144 Majorie A. Murphy & John Dowd**

 **Location of Violation: 624 Pelican Drive, Fort Walton Beach**

Okaloosa County Code of Ordinances, as amended, Chapter 11, Health & Sanitation, Article VI, Code Enforcement, Sec 11-604 Enforcement Responsibility (1)( c) Part C – Residential Area Covenants – Uses – within any B-1 Private Residential Area, no building, structure or premises shall be used or arranged or designed to be used, except for the following use: A detached, vacation or permanent residence for only one family or for one housekeeping unit.

Steve Kenney, Okaloosa County Code Enforcement Officer, stated that Code Enforcement received a complaint that there was short term rental activity at this address. Mr. Kenney said that the neighbor, Ms. Walls, provided us with various pictures showing out of state tags, several different times through the year, all beginning around the July 4th weekend. The complainant also supplied several advertisings for the property. On July 12th Mr. Kenney issued a Correction Notice and on July 14th Mr. Dowd contacted him by phone. Mr. Dowd expressed his believe that the neither the Covenants or the Resolution prevent short term rentals on Okaloosa Island. (*Recording muffled with static*) Mr. Kenney said after verifying the short term rentals continued, he issued a Notice of Violation based on Chapter 11, Health & Sanitation, Article VI, Code Enforcement, Sec 11-604 Enforcement Responsibility (1) (c) Part C – (The Covenants and Restrictions) which states that B-1 private residential area, can be used for only one family or housekeeping unit. Mr. Kenney said he did not include the language from the Resolution, but out of an abundance of caution, and after reviewing the Resolution and the Covenants, it was his believe (Mr. Kenney) that the original Covenants prohibit this activity without the Resolution. He said that this Notice of Violation was mailed certified, return receipt, on August 19th and signed for August 22nd. He said Mr. Dowd contacted him on August 23rd by email and requested the matter go before the Board. Mr. Kenney said that this issue was originally scheduled for September 19th, but Mr. Dowd had a conflict and was unable to attend and he was given an extension. The Notice of Hearing was emailed to Mr. Dowd’s office, at his request, on September 20th by Ms. Payton. Mr. Kenney said he checked the property listing today and went by there to take photographs and there were no vehicles, but that the listing is still active. Mr. Kenny said Staff’s recommendation is 14-day compliance time period, administrative fees, and a fine of $250 per day if compliance is not met.

Ms. Susan Wall, 623 Pelican Drive, Fort Walton Beach, addressed the Board. She said this has been a problem with people coming in and out of there. She said this weekend, the people staying there had a big dog, that was unleashed, and she had to run him out of her garage twice. She said that another neighbor on the other side at 625 Pelican, who live in Birmingham, had their camera go off. It was someone they did not know. A few minutes later their camera in the back yard went off and a boat pulled up and docked at their boat launch and about ten or fifteen people got out and claimed over his fence and onto the property. She said at another time a man that she did not know came to her home, she believed he was intoxicated, and asked to jump off their pier. She told him no and he went away. In August there were two men at the rental property talking about jumping in and her husband leaned over the fence and told them there were rocks down there and the current was could be pretty bad. Ms. Wall said that she and her husband purchased this property because there were no rentals.

Mr. Nicholas Hall of 627 Pelican Dr., Fort Walton Beach, addressed the Board. He began by stating he had this property since 2012, moved here full time in 2017, and a year ago volunteered to serve on the Architectural Review Committee. He said the Covenants say “no transients”. He said he has noticed high speed traffic going into that residence and coming from that residence. He said that there is a stop sign in front of his house and it is always being violated. He said that he has noticed more trash on the triangle in front of his home, the trash cans at the property are always out and overflowing. He said it’s an eyesore and he doesn’t appreciate the traffic that is brought in by the property.

Mr. Brick Bradford of 439 Cardinal Ave, Fort Walton Beach, addressed the Board. He said he is the former director and, in his capacity, he fielded several phone calls concerning the Restrictions and Covenants, especially about short term rentals. He said that of the 5,000 condos, apartments and homes, on Okaloosa Island, 276 of those are in the B-1 zoning. Mr. Bradford said the complaints are about the parties, the trash, and traffic. He said he had confronted several of these renters and most would tell him they paid good money to stay there and they will do what they want. (*recording muffled with static*)

Steve Kenney introduced Mr. John Dowd, who said he was here on behalf of the owners at 624 Pelican Drive. He thanked the Board for their service, as well as Lisa Payton and her Staff. He said he was surprised by some of what he heard today because he lives on the Island, and has for 55 years, and no one has ever approached him and told him about the trash, speeding, and this is the first he had heard of any of this. Mr. Dowd said it was tough to be in front of the Board today, because this is really a legal issue. He said he realizes that this Board deals with factual issues and that they are not denying that there is a short term rental at this address, but that it is really a legal issue. Mr. Dowd said he had to have a record of all this and he would be as brief as he could. Mr. Dowd said he supplied Ms. Payton with a memorandum and asked that she pass it to the Board members. He said there is no legal prohibition to short term rentals or long term rentals on the Island. He said he would like to enter a copy of the memorandum into the record and gave Ms. Payton a copy. (*There was a lot of background noise and several places that the recording was muffled with static*)

Mr. Dowd went over the memo. He mentioned that the third Notice of Violation that the owner received and had the wording of the Resolution, which was passed in violation of the Covenants. Mr. Dowd said that the Resolution was signed by the Chairman of the Association and the Secretary, but that there is no mention of a vote of the Island Authority. He said the Board had no legal right to pass this, in the same way that a Homeowners Association couldn’t pass something without it being approved by the members. He said that the State has responsibility over short term rentals unless a restriction was passed before June 1, 2011. Again, he stated that when all the Island Authority information was passed to the County by the State, the Resolution was not included, only the Covenants. Mr. Dowd asked the Board to dismiss this matter or give them a period of time that they could go to court and deal with it there.

Chairman Banks said we needed to defer to Counsel.

Lynn Hoshihara, Okaloosa County Attorney, representing the Code Enforcement Board, said she would like to correct something. She believed that she heard it stated that our Board adopted some kind of short term rental ordinance, and our Board has not. She said an ordinance was presented several years ago, but our Board elected not to take any action because the Legislature was reviewing it and our Board wanted to see what the State was going to do. Ms. Hoshihara said she would advise the Code Board, as Mr. Dowd had stated earlier, that this is mostly a legal matter, and that their duty is to enforce the Codes and by virtue of the Codes any competent restrictions, review the evidence that is presented, and make a determination as to whether a violation has occurred, and access any penalties that you feel are appropriate. She went on to say that the Code Enforcement Board does not have the authority or jurisdiction to validate any regulation that is currently in place and that would ultimately be up to the Court to do. She said that pursuant to our Code, when there is a violation on Okaloosa Island and to the Okaloosa Island Leases and Covenants, then the Board acts as a recommending body and rather than issuing an order, whatever the Board ends up issuing today, will be a recommendation that is forwarded to the Okaloosa County Board of County Commissioners (BCC) for a final decision, which could then be appealed to the Circuit Court.

Caralee Gibson asked Mr. Dowd if he believed that the intent of the B-1 zoning designation was to prevent short term rentals. He replied that he did not, but that he did believe it was the intent of the Resolution in 1968 was to prohibit short term rentals and they just did it the wrong way.

Elliot Kampert, Growth Management Director, came forward to address the Board. He said he did agree with Mr. Dowd that this issue should be addressed in a different venue. (*muffled static*) Mr. Kampert continued that the first Notice of Violation when looking at Exhibit A, the language is a direct result of the 1968 Resolution. He said that there is a pamphlet that the Staff hands out, which is a result of putting together a combination of several documents, so instead of weeding through several different documents, someone could go to this one pamphlet. This pamphlet has a series of references of where the changes came from at the end of it. Mr. Kampert said that the Statutes require that the counties present a single unified version of all their ordinances, and you can find those on Municode. Mr. Kampert agreed with Ms. Gibson that it appears the intent of the Resolution was to prevent short term rentals. He quoted a portion of the Resolution “It is further provided that any rentals of units in said B-1 Zone, which come under the definition of Public Lodging Establishment, as defined by Florida Statues, Chapter 509, 1967 Legislature shall be deemed to be a commercial operation and shall not be permitted therein.” He said that language in the Resolution clearly indicates that they believed it was a commercial operation, rather than a single-family home. He added that the determination of it was presented with the proper percentage isn’t something we could determine here today, but it appears it was the intent of the document. (*muffled static*)

Mr. Dowd reiterated that he believes the court case in the attached document of Panama City Beach case shows that the rental of your home is not a commercial enterprise.

Mark Siner asked if he was correct in saying that if we make a motion, that motion will be a recommendation to the BCC, and they will evaluate the Code Board’s recommendation and they will actually take action concerning this issue. Ms. Hoshihara said that is correct. Mr. Siner asked if the BCC could take a different action from the one that the Code Board recommends. Ms. Hoshihara said they could. Mr. Siner said this issue has been brought to the Board in the past. Ms. Gibson said that the order at that time was to cease and desist or fines would be assessed.

*Mark Siner made a motion to make a recommendation to the Board of County Commissioners (BCC) that Marjorie A. Murphy and estate of John Dowd, Sr. bring this property into compliance by December 20, 2022 or a fine of $250 per day, along with administrative fees, would begin on December 20, 2022, second by Caralee Gibson.* Mr. Siner explained that he feels it is in the best interest of the Board to maintain the stance we have taken in the past. He said that we have always interpreted the Covenants like this and we need to be consistent (*muffled static*) *Motion passed unanimously.*

**C. CEB CASE #22-518947 Paul J. Nibert**

**Location of Violation: 227 Newcastle Drive, FWB**

Okaloosa County Code of Ordinances, as amended, Chapter 11, Health & Sanitation, Article III, Nuisances, Division 3, Litter, Section 11-131, Definitions, Section 11-134, Litter Storage, and Section 11-136, Public Nuisances; and Chapter 21, Traffic and Motor Vehicles, Article IV Abandoned and Nuisance Vehicles, Section 21-65 Nuisance Vehicles.

Steve Kenney, Okaloosa County Code Enforcement Officer, said we received a complaint about rodents and the place being a mess. Mr. Kenney made an onsite inspection and found two nuisance vehicles and four boats and the property was littered with trash. He issued a Correction Notice and the owner called him on the 18th of April and said he had made some progress, but needed more time. On April 19th Mr. Kenney went out there which showed two boats removed and the other two were covered, and the van had a good tag on it. Mr. Nibert made progress through most of May and then in June it slowed. Kenney mailed a Notice of Violation on the 17th of August and it was signed for on the 23rd of August. September 20, 2022, he checked the property for compliance and prepared the notice and scheduled this property to come before the Board. Mr. Kenney said that as of today, the white Ford F-150 still remains in the front yard without a tag, trash remains in the yard. He said Staff’s recommendation is to give them 30 days to comply and if they don’t to issue a fine of $250 per day, along with administrative fees.

*Caralee Gibson made a motion that if the property was not brought into compliance by November 15, 2022, then a fine of $250 per day, along with administrative fees, would begin. Second by Mark Siner*. *Motion passed unanimously.*

**D. CEB CASE #22-518948 James W. Carte**

**Location of Violation: 408 Walters Circle, FWB**

Okaloosa County Code of Ordinances, as amended, Chapter 11, Health & Sanitation, Article III, Nuisances, Division 3, Litter, Section 11-131, Definitions, Section 11-134, Litter Storage, and Section 11-136, Public Nuisances; and Chapter 21, Traffic and Motor Vehicles, Article IV Abandoned and Nuisance Vehicles, Section 21-65 Nuisance Vehicles.

Carlos Jones, Okaloosa County Code Enforcement Officer, read the above violation. Mr. Jones said he received this complaint on July 22, 2022. He said he went out to assess the property and found a large amount of trash and unregistered vehicles. He knocked on the door but no one answered. He left a Notice of Violation and went back out there and noticed the Notice of Violation was gone and debris and vehicles were still there, and still having no contact with the owner. Upon his next visit to the property, there was no change, trash throughout and the same number of vehicles. On August 18, 2022 he issued a Notice of Violation by certified mail. He finally spoke to the residents and explained the process. On October 7th he posted the property with today’s meeting, October 19, 2022. Mr. Jones said he spoke with the owner’s former wife and she asked that we give them another week to bring the property into compliance. He explained that it would be best to come before the Board and ask for an extension. He said the property has not changed, and that Staff’s recommendation is to issue a fine of $250 per day, along with administrative fees, until the property is brought into compliance.

*Caralee Gibson made a motion that if the property was not brought into compliance by November 15, 2022, then a fine of $250 per day, along with administrative fees, would begin. Second by Mark Siner*. *Motion passed unanimously.*

**E. CEB CASE #22-519295 Michael W. Porter**

**Location of Violation: 1552 Pine Street, Niceville**

Okaloosa County Code of Ordinances, as amended, Chapter 11, Health & Sanitation, Article III, Nuisances, Division 3, Litter, Section 11-131, Definitions, Section 11-134, Litter Storage, and Section 11-136, Public Nuisances; and Chapter 21, Traffic and Motor Vehicles, Article IV Abandoned and Nuisance Vehicles, Section 21-65 Nuisance Vehicles; and Appendix E, Chapter 6 Development Design Standards, Sec 6.00.04 – Regulations (7) Travel Trailers, Campers, and Motorhomes.

Code Enforcement Officer, Steve Kenney, said he received a complaint about people living in an RV on the right-of-way (ROW) and junk all around the property. After going out to inspect the property he found litter and junk on the property, there were trailers, trash and junk on the ROW. Mr. Kenney said there were trailers and boats in the ROW without proper registrations. He said he spoke with Randy Mathis who said he was the caretaker of the property, and had Mr. Mathis sign the Violation Notice. Mr. Kenney sent out a Notice of Violation on August 27th and it was returned to our office on September 26th UNCLAIMED. On September 22, 2022 Mr. Kenney posted the property. He said he was contacted by the mother, Ms. Brown, and he explained to her what needed to be done to bring the property into compliance. They spoke again on October 13th and on October 14th they had made significant progress. He showed pictures that were taken today (October 19, 2022) that showed the ROW was cleared and the property has been brought into compliance. Mr. Kenney said that Staff’s recommendation would be to find that the property was in violation, but brought into compliance by the Hearing, there should be no daily fines, but that the administrative fees should be assessed.

*Caralee Gibson made a motion that the administrative fees be assessed, but to waive the daily fines since the property was brought into compliance by the Hearing date. Second by Mark Siner*. *Motion passed unanimously.*

**9. OTHER BUSINESS:**

There was none.

**10. ADJOURN**

*There being no further business before the Board, Chairman Banks declared the meeting adjourned at 5:04 pm.*

Prepared by:

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Lynne Oler

Code Enforcement Administrative Assistant