Code Compliance Board Regular Meeting Minutes

March 7, 2024 at 3:00 PM

City Hall Commission Chambers
401 S. Park Avenue

Present
Douglas Bond, Paul Mandelkern, Steve Heller, Todd Boyer, Wayne Johnson

Absent
Melissa Blaney

Attorney Present
Deputy City Attorney Richard Geller

Staff Present
Building Official Gary Hiatt, Assistant Building Official Ashley Ong, Code Compliance Division Manager Susanne Porras, Code Compliance Officer Christina Busch, Code Compliance Officer Phillip Wade, Board Secretary Susan Pruchnicki

1. **Call to Order**

    a. Roll Call

    b. Statement of Purpose

2. **Swearing in of Witnesses**

3. **Consent Agenda**

    a. Approve the minutes of the February 1, 2024, meeting

Mr. Heller noted a correction: "Gary Render" to "Barry Render" on page 3 of the draft minutes.

Deputy City Attorney Richard Geller said the minutes should reflect his attendance.

Motion made by Paul Mandelkern to approve the minutes with the proposed amendments. Seconded by Steve Heller. Motion passed 5-0.

4. **Public Comments (for items not on the agenda): Three minutes allowed for each speaker**

5. Public Hearings (Public participation and comment on these matters must be in person.)

a. CCB# - PM-23-0209 2261 Kentucky Ave., Winter Park, FL 32789

Code Compliance Division Manager Susanne Porras informed the Board that the violator came into compliance just hours before the meeting. Notice was provided in the form of an email, a copy of which was placed in the Board's binders. Code Compliance Officer Christina Busch went to the violation address and confirmed with photos that the vehicles had been removed from the property. An Affidavit of Compliance was issued on March 7, 2024, and mailed to the violator via Certified and Regular mail.

A motion to dismiss was made by Wayne Johnson, and seconded by Douglas Bond. Motion passed 5-0.

6. Non-Action Items

7. Staff Updates

Code Compliance Division Manager Susanne Porras provided the Board with an update on case CCB# PM-22-41, 511 Granada Dr. The respondent has applied for a demolition permit for the structure. The permit has been reviewed and processed. Wayne Johnson inquired about the time frame provided by the Board to Ms. Porras. Ms. Porras did not have this information at hand, but stated she would update the Board at the next meeting. Mr. Mandelkern requested that Ms. Porras refresh the Board's memory regarding the violation. Ms. Porras stated the case involved a Property Maintenance violation where the roof caved in. Mr. Mandelkern recollected and confirmed that the house would demolished. Mr. Geller interjected that the respondent wished to obtain an engineering opinion before deciding to repair or demolish the structure. Mr. Johnson recollected that the respondent was provided sixty days, but this should be confirmed. Building Official Gary Hiatt further noted that fees have not been received for the permit; for the City received the application on March 6, 2024.

8. Board Attorney Reports

Deputy City Attorney Richard Geller informed the Board of discussion between senior City management regarding the foreclosure procedure. Under the code, the Board can authorize foreclosure, but the City Commission authorizes the expenditure of funds, including for attorney's fees, and, therefore, would have the final say. Mr. Geller then read what was provided to him, which he stated has been the process followed so far and made sense:

The Code Board has the authority to authorize the background work to be completed by the City Attorney for properties with liens in place for consideration of foreclosure. Specific locations are required to identified and voted on individually. This is to be authorized by an affirmative vote of the Board. Once the background information is completed upon request of the Board, it will be put on the agenda for the next available Code Board hearing for consideration, making a recommendation to the City Commission. An affirmative vote of the Board is required to forward the recommendation to the City Commission. Out of an abundance of caution and allowing for due process, the affected property owners will be noticed when the consideration is before the Code Board. The Commission will retain the final decision-making authority on whether to authorize the foreclosure proceedings to commence.

Mr. Geller stated a request was made by this Board to obtain a title report on the property located at 6 Isle of Sicily - the Dawoud case - and report back. Since the last meeting, Mr. Geller received the title report and reported that the case is not clear-cut for foreclosure. The reason being is that the City is a junior lien-holder. Truist (formerly SunTrust) has a purchase money mortgage on the property securing a $3 million-dollar loan for a $4 million-dollar purchase of the property. The IRS has a lien on the house for about $620,000.00. Various contractors who have not been paid on this property, i.e. $50,000.00 from Dream Crete Custom Creations, $121,000.00 from Rolling Green Landscape Solutions, and others, have filed liens on the property.

Mr. Geller noted that Fishback-Dominick Law does a fair amount of bank work, including foreclosures. Sometimes the bank is the second mortgage holder or even "further behind in the pecking order." When a junior lien holder forecloses, the city will have a credit for the amount of its lien, but it is possible that the city could be out bid by the principal lien holder. Even if the city did get the property at the foreclosure sale, the city would take the property subject to the superior liens on it. The IRS could require the city to pay the amount owed to them; Truist Bank could do their own foreclosure and possibly wipe out the city's interest since they are the superior lien holder. It is possible that there is enough equity in the property that the city could foreclose, get the property, then turn around and sell it, making enough profit to pay off all the superior lien-holders and then get some or all of the code compliance fines paid as well. Mr. Geller stated that he did not know this for a fact; he would want an appraisal of the property. A drive-by appraisal with comparables of other properties in the area could provide some idea of the amount of equity in the house.

Mr. Geller stated this is where it stands right now. He does not have enough information to say it is a good idea to foreclose. Mr. Geller noted that he understands how a homeowner who is uncooperative, recalcitrant and continuing in violation can be maddening, but this must be done correctly. He welcomed any feedback from the Board.

Paul Mandelkern noted frustration that the property owner is a second offender, removing trees, altering the shoreline, and damaging the lake without mitigation or remediation. Mr. Mandelkern asked for clarification on what action Mr. Geller was suggesting, if he would come back with a further recommendation at a subsequent meeting? Mr. Geller asked for additional input from the board members, if they would recommend that the city obtain an appraisal for further evaluation on whether to proceed with foreclosure.

Douglas Bond asked if this would be Mr. Geller's recommendation as a first step. Mr. Geller stated an appraisal must be the next step, and believed that he and city staff would want it done.

Steve Heller confirmed with Mr. Geller that the property was not homesteaded at the time the cases were presented. If the homeowner subsequently filed for homestead, the validity of the homestead could be challenged in litigation.

Paul Mandelkern asked how homestead is determined, if by registering with the tax assessor, or if there is a legal definition? Mr. Geller did not know the answer to this question, other than if the property is registered with the tax assessor then homestead is presumed, absent evidence that the person claiming the homestead exemption is not truly residing on the property. The property must be the property owner's principal residence for homestead to be validly claimed. Paul Mandelkern then inquired if the city has any other remedy beside foreclosing on the lien. Mr. Geller said there isn't a simple answer. He noted code liens are good for 20 years, so there is a fairly good chance the property could change hands, and at that point the title company would want the city's liens paid to clear the title. Not much in the short term can compel the homeowner to come into compliance. Any equity desired by the homeowner in the property is being eaten away by their lack of cooperation in correcting the violations. On the other hand, given the amount owed to the IRS, the homeowner may not have the financial means to come into compliance.

Todd Boyer offered that as soon as foreclosure was filed the owner would file for bankruptcy and postpone the process.

Paul Mandelkern asked Mr. Geller if the city had any other legal remedy to not necessarily collect the fines, but force the restoration of the property. Mr. Geller said that the city could request the Orange County Sheriff to levy personal property, i.e. furniture, electronics, etc., but does the city really want to do that? Mr. Mandelkern clarified that, in his mind, there were two separate issues: one being the monetary fines, and the other being the removal of protected trees, shoreline alterations, and pollution of the lake. Does the city have any remedy to force the landowner to correct the violations, separate from paying the fines? Mr. Geller said the Board order included mitigating the damages, but the city cannot force the owner to comply with the orders.

Mr. Geller reminded the board that the owner restored previously removed trees, then cut them down. Mr. Mandelkern acknowledged Mr. Geller's investigative work and said he wanted this information on the record.

Mr. Geller asked the board members if any of them had experience in real estate and with foreclosures. Mr. Bond responded that he did not. Mr. Boyer responded that he performed foreclosures across the country for a Veteran's Association. The difficult ones to process were those with multiple liens against the property. He said the Veteran's organization sometimes got city and governmental liens released, but not federal liens.

Mr. Boyer said that he thought the property was in the range of $6.5 - $8 million dollars. Mr. Geller acknowledged Mr. Boyer's assessment.

Wayne Johnson inquired with Code Compliance Division Manager Susanne Porras if code officers had made any visits to the property recently. Officer Porras responded that she visited with Urban Forestry Manager Josh Nye approximately 90 days ago and nothing had changed. Mr. Johnson asked if someone appeared to be living at the property; Ms. Porras responded yes - they saw the owner.

Todd Boyer made a motion to authorize Mr. Geller to obtain an appraisal of the property, to explore what can be done, and report back to the Board at the next meeting. Paul Mandelkern second the motion. The motion passed 5 - 0.

9. Board Comments

10. Upcoming Agenda Items

11. Adjournment

No further discussion. Motion to adjourn by Douglas Bond, seconded by Todd Boyer. Motion passed 5-0.

ATTEST:

Approved by the board on April 4, 2024

Susan Pruchnicki

/s/ Susan Pruchnicki, Board Secretary