

Minutes of a called workshop meeting of the City Commission of the City of Palatka, Florida, held on the 25<sup>th</sup> day of June, 2009

PRESENT: Mayor Karl N. Flagg  
Commissioner Mary Lawson Brown  
Commissioner Allegra Kitchens  
Commissioner Vernon Myers  
Commissioner James Norwood, Jr.

CODE ENFORCEMENT BOARD MEMBERS PRESENT: Chairman Kenny Downs, Douglas Webb, LaSandra Williams, Terrill Hill, John A. Lyon (alternate)

Also Present: City Manager Elwin C. Boynton, Jr.; City Attorney Donald E. Holmes; City Clerk Betsy Jordan Driggers; Police Chief Gary Getchell; Fire Chief Mike Lambert; Planning Director Jim Lee; Assistant Planning Director Debbie Banks, Code Enforcement Officer Liz Hearne, and Code Enforcement Board Recording Secretary Pam Sprouse.

CALL TO ORDER: Mayor Flagg called the meeting to order at 4:00 p.m. and read the following Meeting Call, dated May 6, 2009:

TO MESSRS: MARY LAWSON BROWN, VERNON MYERS, JAMES NORWOOD, AND ALLEGRA KITCHENS:

You are hereby notified that a Special Called meeting of the City Commission is called to be held at 4:00 p.m. on June 25, 2009 at the regular meeting place of the City Commission at City Hall, 201 N. 2<sup>nd</sup> Street, in the City of Palatka.

The purpose of the meeting is to hold a joint City Commission and Code Enforcement Board workshop.

/s/ Karl N. Flagg

Karl N. Flagg, MAYOR

We acknowledge receipt of a copy of the foregoing notice of a special meeting on the 14<sup>th</sup> day of May, 2009

/s/ Mary Lawson Brown  
COMMISSIONER

/s/ Allegra Kitchens  
COMMISSIONER

/s/ Vernon Myers  
COMMISSIONER

/s/ James Norwood, Jr.  
COMMISSIONER

INVOCATION – Chief Gary Getchell

PLEDGE OF ALLEGIANCE – Chief Mike Lambert

Mayor Flagg welcomed members of the Commission and Code Enforcement Board.

CODE ENFORCEMENT STANDARD OPERATING PROCEDURES – General Overview – Debbie Banks, Code Enforcement Supervisor, said as staff has changed throughout the years, the City Attorney has suggested policy and procedural changes that have not yet been incorporated into the official procedures manual. There are many statutes they have to follow. She chose to highlight the following three potential procedural changes:

1. Response to Complaints – in the past, code enforcement has been proactive; the City Attorney has recommended code enforcement be reactive to complaints, rather than proactively seeking violations and the recommended procedure reflects that change.
2. Criteria for Lien Reduction – a procedure has been developed over the past several years. Because this is sometimes handled differently, a procedure should be put in place for consistency.
3. Extension Table – this is to address requests for extensions by violators. Inconsistency in granting extensions has clouded violations over a period of time regarding what the violation was and how to correct it. This provides for one extension with a definite extension period, depending upon the violation.

Commissioner Myers asked for an explanation of reactive versus proactive code enforcement. Ms. Banks said it is more defensible to respond to a complaint that is called or mailed in, rather than staff initiating complaints.

Mr. Holmes said the problem with staff initiated complaints is that you leave yourself open to subjective complaints regarding selective enforcement. This is not very defensible in the eyes of the violator. You end up trying to justify why you cited a certain person for having a violation, when another violation exists three doors down, even though it may be a different type of violation. It leaves people with the impression that the system is broken. They cannot find every violation that exists; it is not hard to get to the point when stating how a complaint was filed when you can say that a complaint was filed by someone. In this scenario, being complaint-driven rather than proactive gives you a total explanation as to why a given violation is cited. This does preclude staff from initiating a complaint. These changes came about through experience and time. The City is in court now over a selective enforcement argument. At this time, if staff is investigating a certain complaint and they happen to see another complaint next door, their policy is that they write up anything in the

sphere of view of the original complaint. They ended up with at least one Code Enforcement Board (CEB) case where they were dealing with a car with an out-of-date tag that you could see from the road, but no other complaint existed. There were other more serious complaints on the docket that day. His suggestion is to either make the process complaint driven, or establish a hierarchy of complaints they will investigate on their own in order to designate high-priority investigations and forego the lower-priority issues. This is just an easy way to explain why the investigation and citation exist. It eliminates a lot of hard feelings. Ms. Banks said staff will act upon anything dealing with the public's safety or welfare. Commissioner Norwood said this pits citizens against citizens and neighbors against neighbors. Mr. Holmes said that already exists; the majority of the complaints they work are already complaint driven. That has always existed. The County tried to eliminate anonymous complaints because of that, but ultimately the county went back to allowing anonymous complaints so staff could say they didn't know who made the complaint. You can only go so far as to try to address issues. Someone could claim that staff made up the anonymous complaint. Someone who holds a grudge could be the one complaining. Unless you eliminate citizen-driven complaints, you will always have that.

Regarding the handout, page 3, top of the page – Enforcement Procedures #1 - Commencement, Mayor Flagg read the language in the handout (filed). He said this clarifies the procedure and asked who decides if the public health, safety and welfare is threatened. Mr. Holmes said that is at the discretion of the code enforcement officer or staff; there is a difference between an expired tag and an unsafe building. There could be some 'blurred lines.' They are talking about dilapidated buildings, etc. Mayor Flagg asked they add an "i.e." to clarify what could qualify in this category.

CEB Chairman Downs said the CEB has struggled with the car tag issue since day one. Some people may have a car that is not operational; they may have to keep it in their yard. In staff's defense, they have to enforce the rules. The case Mr. Holmes cited was just that; there were no other violations other than the expired tag; even the grass under the vehicle was kept mowed. Mayor Flagg said an automobile is personal property. Commissioner Brown said sometimes people work out of town for many months and tags may expire while they are working out of town. Ms. Banks said many times they just advise people to turn the car around so that the tag is not visible from the road. Mr. Hill said there is a conflict between the City and County code; the County's code states if the vehicle is operable, it can be parked in the yard; the City's code states the tag has to be current. Mayor Flagg said car tags are not a top issue for code enforcement; they should align the City's and County's Codes. Mr. Holmes said that is exactly the point and why they drafted the language. Car tags are not a

threat to public safety and/or welfare. Mayor Flagg asked how complaints are classified. Ms. Banks said any complaints received from Police or Fire concern public health and/or safety/welfare. They do send warnings on those, and people have a certain amount of time to correct the violation. Mr. Downs said when someone is running a business and they have a non-compliant sprinkler system, they try to work very closely with those people so their business is not shut down. Mayor Flagg said the Board doesn't need to be in the business of giving people the perception of partiality; that is why they set parameters. They want to be equitable and impartial. Commissioner Kitchens, a former CEB member, said the complaint-driven process is much better for several reasons, and cited a situation in particular where the citizen was seemingly dissuaded from making any complaint. With this change, if a citizen files a certain complaint on one property and not another, that is the reason only one complaint was filed. Most people can figure out who turned them in.

Commissioner Norwood asked how many complaints they get per week on average. Liz Hearn, Code Enforcement Officer, said over the past year they average 17 complaints per month. The timeline for each complaint varies; if it goes to the CEB it can be time-consuming and involves the City Attorney. She investigates complaints within a day or two of receipt and determines whether it's a valid complaint. Of those 17, a certain percentage are not valid complaints. Approximately 60% of the valid complaints are resolved and never go before the CEB. Regarding extensions, Commissioner Brown asked to reconsider this provision. Some improvements cost more than others and the economy is bad; personal income is down. Resolving a roof issue takes more time than getting the yard mowed. Ms. Banks said the time permitted depends upon the violation; this is just a staff-initiated extension. Per the question, Ms. Banks said "HTE" refers to the database they enter permits and complaints into. Mayor Flagg asked they research that.

Regarding the passage at the top of page 4, ". . . and give them a reasonable time to correct the violation" and the protocol for determining "a reasonable amount of time" for investigation, Ms. Banks said statute does not define a reasonable time, but they regard it as 15 to 30 days.

As to Page 5, Item #5 – Alternative Methods of Serving Notice, regarding the warning notice procedure, Ms. Banks said the notice goes out by certified mail, and when the card is returned, they enter the date received into the database. If the warning is returned unclaimed, they go out and post the property and post a notice in City Hall. The clock keeps ticking on it. They use the mailing address listed on the property appraiser's record.

As to Pages 6 & 7 regarding Code Enforcement Board Agenda, Ms. Banks said she would insert language regarding swearing in of all witnesses on page 7. Prior to each case, witnesses are sworn in on a case-by-case basis. City staff is sworn in for all cases at the beginning. Addressing the questions about perjury, Mr. Holmes said it is an official process and people are sworn in, but few perjury cases are prosecuted. The Chairman swears in all staff and witnesses.

Regarding Item 12 on Page 8 – Recommended Motions – this is new. They use the “Holmes motion” but this is more official. They also came up with other standard motions, which is beneficial for continuity. Regarding Item 13, Bottom of page 8 – Procedures Following CEB Hearing, they do not pay overtime for the board secretary to type minutes; “immediately” means during regular working hours.

As to Item 15 on Page 10 – Reduction of Liens – Mr. Holmes said many times people come to the CEB asking for a reduction or elimination of a fine; the Board will entertain this when the property is brought into compliance. They need to put some criteria in place for this for consistency so the Commission understands the thought process. Chairman Downs said it is important that they are consistent. This is what it’s all about. They have to also be realistic, and he gave some examples of fines the Board had recommended be forgiven. He said some people are gracious about it and cooperate, and others don’t. These cases are old once they get to the Board; people have been given many chances. They don’t worry about complying until the fine gets large. These folks knew what the fine was in the beginning. The CEB reduces many fines. They need to work this out for the benefit of both the CEB and City Commission. Mr. Holmes said regarding subpart (c) - Title Search Deficiencies, this should be clarified to address the new owner’s knowledge of existing code deficiencies; if a new owner purchases a property knowing a fine was in place, that is different than a new owner not knowing a fine was in place. If a new owner has a search done and pays title insurance, and a fine shows up later, as has sometimes been the case in the past, that should have more merit than an owner who doesn’t undertake a title search. Commissioner Kitchens said she doesn’t like title search deficiencies, but likes the rewording. Commissioner Norwood said they need to let new owners bring properties into compliance. Mr. Holmes said they have addressed that under (d), Bringing New Properties Into Compliance. Mr. Holmes said another factor would be cost of achieving compliance, taking this into account along with the time it takes. If it takes \$150 to get the yard mowed and they wait 3 years, that’s one thing; if it costs \$10,000 to put on a new roof and it takes three years, that’s another. The last factor is the relative amount of the fine compared to the value of the property. The idea is to provide a checklist of factors to be discussed. Up to now, when someone has come to the CEB, it has been “open season” and most requests are granted. This provides a checklist and criteria. He believes that the relative value of

the property should be a consideration. With a \$10,000 fine on a \$10,000 property, the City will likely end up with the property. This is a factor that may justify reducing the fine, depending upon how the other factors play in. Commissioner Kitchens asked how they determine the value of the property. Mr. Holmes said they have to take the property appraiser's value; they can't pay appraisers to appraise each property. That is the easy answer. They will add that to the stipulation. Mr. Hill said the criteria seems to be rigid; he suggested some type of catch-all phrase to give them a certain level of discretion to use their own judgment, such as "any justifiable mitigating circumstances" to (a) – Documented Proof of Economic Hardship. Mayor Flagg said their goal is voluntary compliance. Under (a), can they add documented proof of economic or health hardship. After discussion there was consensus to take out Title Search Deficiencies altogether and replace it with other language. Mayor Flagg suggested changing it to "new owner's knowledge of code violations." Mr. Holmes suggested "change of ownership (new owner's knowledge of violations)," saying they've been approached by potential property buyers about reducing the fine if they purchase it and fix it up. Mr. Hill said they see a lot of "heir" property who may not be knowledgeable of the condition of the property. "Heir Property" is where the owner died, but there was never a probate proceeding, and there is no legitimate owner of the property. The Tax Notice goes to "Heirs of John Doe. . ." Many times the property appraiser doesn't have a good address; if that is so, the property tax certificate gets sold to a new owner. Mr. Hill said many times notices are returned because there is no good address.

Mayor Flagg asked to add to (d), "and/or cost to achieve bringing property into compliance." Mr. Holmes said they should be separate factors. Mayor Flagg asked for the definition of 'communication.' Ms. Banks said it is personal contact. It is documented. Phone calls and letters are documented. Mr. Holmes said the documentation opens up a dialogue. Ms. Banks said they include dates and times. Ms. Banks asked if they are going to add "heirs property" to the list. Commissioner Kitchens said she doesn't see why; the property appraiser is required to notice the last known address. Someone is getting the tax bill. Commissioner Brown said many times people don't set up estates. After discussion, Mayor Flagg asked "such as" items be listed under (a). Mr. Holmes said it shouldn't be too specific; this leaves the Board room to exercise discretion. The weight of the proof can be considered by the Board; they don't want to put a list of 'documented proof' together. It was intended to provide a focus point. Mayor Flagg said when people start claiming favoritism or persecution they need something to look at. Chairman Downs said they try to use common sense. Commissioner Norwood said they need consistency and consistent guidelines. Mr. Holmes said they can add, "including, but not limited to, W-2 form, tax return, pay stub, etc." Mayor Flagg said some people will appear with their attorney alongside them to present their case. Commissioner Norwood said they

need to document how the decision was made in order to leave a paper trail. Commissioner Brown said some people just need help and they need to consider that. Mayor Flagg said staff can make sure people come to these hearings prepared. They are aiming for voluntary compliance. This is a partnership. Commissioner Brown said there is a fear people have of code enforcement violations; people are afraid of losing their houses. Sometimes they've made rules and regulations they regret. Commissioners noted under duration of lien, that apparently they can't continue a lien for more than 20 years. Mr. Holmes said a lien has the same priority and characteristic of a civil judgment, which is 20 years. After that it is no longer enforceable. Unless they voluntarily sell, you cannot force the sale of homesteaded property. Under foreclosure, banks foreclose on the contract or mortgage; a judgment can't be used to take homesteaded property. They do sometimes foreclose; usually one every other month. It is a long process. The CEB makes that ultimate decision; staff takes it before the CEB with all the details, and the CEB makes a value determination. Regarding (d), Ms. Williams asked if they are going to assign percentages or a formula. Mr. Holmes said he didn't want to set particular percentages. He wanted to have a set of talking points. He didn't want a formula or something that would bind anyone. He likes the idea of a well-functioning, good-faith board that tries to do the right thing. The more you restrict it to percentages, the less discretion you have. This helps present the case by being fair. By having a written policy, may even keep them out of court. It takes away the appearance of arbitrariness.

Ms. Banks said the close of the document is the code enforcement extension table. This is new. It provides a standard with which to grant extensions. These are extensions granted by staff, on staff level, before a case ever gets to the CEB. Mr. Holmes said this falls under the heading of creating consistency. This is a result of direct experience. At the point when a code violation is sent to the CEB, the cost of prosecution is attached. Up to then, there is no cost of prosecution. If staff works with a complaint for six months and gets compliance, no fee is assessed. Whenever staff sends a complaint to the CE board, a fee is assessed. A case usually gets sent to the CEB when someone stops working with them. People argue whether or not they have or haven't stopped working with them. Policy was, as long as people were working with them, they kept it out of the Code Board's hands. If someone stopped working with them, it went to the CEB. Cases went on for years and years. When the time lapses the CEB can grant another extension but then it is on the record. This protects staff and keeps them from having to justify why one case went before the board after 30 days while another went after six months. Everything is on the record. When dealing with something for a long time, the City should collect cost of prosecution. The city has worked on some cases more than two and three years. There is much staff time and effort that goes into this. Some cases have gone to the

CEB after 30 days. This gives a basis for time. Commissioner Kitchens said she believes it is fair and evens the playing field and is highly defensible. There is nothing to argue with. Commissioner Brown asked, if someone is trying to bring a roof into compliance, and needs to wait for a special roofing material, and it goes past the 30 or 60 days, what happens then? Ms. Banks said a permit is required for a roof; that gives them six months to complete. As long as they call for an inspection, they get another six months to get another inspection. Mr. Holmes said they have to get the permit to trip this. Commissioner Brown asked what they can do if someone loses a job and can't address a complaint; Ms. Banks said it will go to the CEB. Mr. Hill said sometimes plans and permits take more than 30 days to acquire. Chairman Downs said they work with individuals on these things. If the engineer is dragging his feet, they can address that. Mr. Holmes said when you give staff discretion to decide the time limit, you put them directly in the line of fire. Commissioner Norwood said the CEB has the flexibility to extend the time. Mr. Holmes said all you are talking about adding is cost of prosecution. Mr. Hill said when you have someone that is complying from day one, but is delayed by workers' time schedules, you are amassing additional costs. Mr. Lee said you have to have a permit to begin the work; it provides flexibility. Mr. Hill said many times you have to have drawings and plans to apply for the permit. Mayor Flagg said they can add a provision that an application for the permit can delay sending cases to the CEB. Mr. Lee said this would be a very small percentage of the cases. If someone has applied for a building permit and is trying to get engineering, he'd like to be able to keep that from the CEB. Mr. Hill said they've seen that three times in the last month. Chairman Downs said many times cost of prosecution is the least of these people's concerns. The cost of prosecution is figured on the amount of staff time involved and actual costs. Many departments are involved. The City has a lot of money invested in these cases, for which the cost of prosecution is not nearly covered. Mayor Flagg asked how that can be addressed. Commissioner Norwood asked if cost of prosecution has been waived in such cases. There was consensus that it had been in the past. Mayor Flagg said if a person makes application for a permit, a reasonable amount of time should be assigned before it is automatically sent to the CEB. They should not send things by default. If an owner is making reasonable progress and can't proceed because engineering drawings are not ready, they shouldn't be assessed. Ms. Banks said the cost of inspection is built in to the permit. Regarding the fire marshal and sprinkler system instance, the Fire Marshall had worked with him for over a year; it was not until it went to the CEB that the violator started to work to alleviate the problems. Mayor Flagg said if someone is eager and ready to comply, they should work with them. Mr. Lee said they should apply for a building permit. Sometimes the contractor doesn't have everything together, but they work with them to get everything together. If they don't finish the process, it expires after six months. Mr.

Holmes said people can keep applying for permits that are allowed to expire; someone needs to decide whether or not this person is acting in good faith. Mr. Lee said that is an issue. After discussion, Mayor Flagg said it comes down to discretion. It is something staff should be able to recognize; people should not be penalized for someone else's delay. There was consensus to let cases go to the CEB according to the schedule, as the CEB has the flexibility to waive those fees based upon the circumstance. Mayor Flagg said if staff has documentable proof, it should be put on a consent agenda and costs of prosecution should be waived. Mr. Holmes asked documentable evidence of what? The whole premise of this is to have something to articulate. Now they are putting the discretion back on staff. Mr. Hill said it should reference something along the lines of "not willful noncompliance." Mr. Lee said you could give them up to six months from the day of permit application. Mr. Holmes asked when that would apply. Mr. Lee said under the building, electrical or plumbing code. Mr. Holmes clarified that the point is that if compliance requires engineering services, and the violator can demonstrate that it is impossible to obtain such services under the timetable, staff should have the discretion to extend the deadline up to sixty days. Mr. Hill said he would be comfortable with giving staff the flexibility of up to 60 days to extend. After further discussion, Mr. Holmes suggested another subcategory saying "In the event that compliance requires the services of an engineer, architect or similar professional and, despite good faith and diligent effort, it is not possible to retain those services within the time provided above, then staff shall have the authority to grant an extension of not more than 90 days to obtain the information necessary to obtain a permit."

Ms. Hearn said this is the extension time staff can grant after the initial time frame; this represents what happens after their first 30 day extension. They've already got 90 days before this starts. Commissioner Kitchens said they should require proof the violators tried to get the things they need but can't; they need to prove they've made a good faith effort. Ms. Banks said a letter from the professional should suffice.

Mr. Lee said they will make these changes and bring them back to the CEB for ratification. Commissioner Brown said she is happy with the changes. Commissioner Kitchens said she sat on the CEB for many years and found most people to be good and decent people who worked to bring their property into compliance, but some were not honest and strung the City along for years. With Standard Operating Procedures in place, no one can come in and charge the City with picking on them. They only want voluntary compliance for the safety and welfare of the citizens. Mr. Lyons said they have tried to help people bring things into compliance without negativity. It is good to have guidelines in place; they won't need them all the time. Mr. Hill said their overall goal is consistency; they have achieved that since he's been on the board. They need to continue to give staff the

discretion necessary to carry out their jobs. He knows certain situations call for more pro-activity. They need to continue to build in discretion for the staff. Commissioner Norwood said this provides consistency for those times that cases come before the Commission, and builds in parameters. They want voluntary compliance and this encourages that. They can proceed knowing that cases that come before them henceforth are defensible. They did a good job in coming up with these parameters. Ms. Williams said they always try to be fair; this helps cover the gray areas. Commissioner Myers said it is a good, workable document and they understand the purpose and need for it. He appreciates the time and effort both staff and volunteer board members put into these matters, and many times this is a thankless job; he puts a lot of stock in board decisions. Mr. Boynton commended staff and Mr. Holmes for bringing this document before this panel. He noted this has been a difficult year; he appreciates everyone's work in putting this in place. It allows the City to move forward proactively. Chairman Downs said this was a good workshop as key issues have been brought to the table and answered. They try to work close to these guidelines and try to use commonsense and be fair with people. They do their very best to send things to the Commission that they can approve. This is for the betterment of the community.

Mayo Flagg said he commends Code Enforcement and Planning staff as well as members of the CEB. The City is grateful for their commitment to the community and for acting in fairness. He thanked the commissioners for what they do. This workshop was beneficial. The more they communicate, the more efficient they can be.

There being nothing further to discuss, the workshop was adjourned at 5:55 p.m.

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CITY CLERK

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MAYOR