



**CODE ENFORCEMENT BOARD
SPECIAL MEETING
Minutes of September 12, 2013**

At 7:00 p.m. Mike Duncan swore in Rebecca Kirchhoff as a member of the Code Enforcement Board and swore in John Schneller as a member instead of an alternate.

Present: John Schneller Ray Pauly
 Rebecca Kirchhoff Linda Vogelpohl
 Betty Dammert

Absent: Ken Sanker, Chair

Also Present: Bill Rachford, Mayor Mike Duncan, City Attorney
 Carol Hofstetter, Zoning Admin.

Ray Pauly acted as Chair in Ken Sanker's absence, taking roll call and led the pledge of allegiance.

APPROVAL OF MINUTES:

AUGUST 14, 2013 SPECIAL MEETING:

MOTION: Betty Dammert made a motion to approve the minutes of August 14, 2013, seconded by Linda Vogelpohl. All in favor, the motion passed 5-0-0.

NEW BUSINESS:

There was discussion regarding having a secretary. The statute indicates a staff member of the City could be present and take minutes or the Board could nominate a secretary from its members.

Mike Duncan introduced himself to the Board members as the city attorney with the law firm of Ziegler and Schneider. He explained this Board was a creation of statutes. Because the City is a member of the Kentucky League of Cities, they provided some model ordinances which are what we used to establish ORD #5-99 in 1999. This board was created so the City doesn't have to go to Criminal Court to file suit against someone. Our City established a Code Enforcement Officer and this board of citizens to hold hearings and set fines instead of going through Criminal Court as per KRS. It was created to meet the second Thursday of each quarter. The City can still go to Criminal Court if the Code Enforcement Board is ignored.

When ordinances are passed they get codified into a Code Book. ORD #5-99 was amended by ORD #2002-14. He suggested everyone read ORD #5-99 and become familiar with it. The City of Alexandria hasn't had any hearings. They have met to set fines. Mike read and explained the entire ordinance.

Linda asked what "remedial orders" means. Mike explained the Board would not only levy a fine, but would order the situation be remedied. Someone could demolish the property instead of fixing the problem. Mr. Duncan explained that not all violations of City Ordinances qualify as civil offenses to come in front of this board. There is a hearing if there has been a violation of the Ordinance and that citation is challenged.

Mr. Duncan said per the Ordinance, the Board has the ability to take testimony under oath, make findings of fact and issue any orders to remedy any violation, which gets back to the

remedial part of the Ordinance. Mr. Duncan said a hearing is to determine if a violation of the Ordinance has occurred.

In order to have a hearing, someone has to have been cited and then contested the citation and asked for a hearing. If the Board was meeting to set fines and not having a hearing, the offenders didn't have to be given a chance to talk. The Board could look at the evidence presented by the Code Enforcement Officer and the Zoning Administrator and set fines according to the evidence presented.

Linda Vogelpohl asked if once you open the floor to let anyone present speak, does everyone present who wants to speak have to be given that opportunity. Mr. Duncan replied it is his opinion that once you open the floor, everyone who wants to speak should be allowed.

The procedure for member appointments is the Mayor appoints a member with the approval of City Council. The Mayor can remove a member for misconduct, inefficiency, or willful neglect of duty. Members must be residents of the City of Alexandria for one year and throughout the tenure of their term. They cannot be employed by the City in any way. Mr. Duncan said our Ordinance states the Mayor would elect the Chairperson. KRS states the members can elect a Chairperson themselves. The Chairperson is a voting member.

This is a five member Board so it takes three members present to make a quorum to take action and it takes an affirmative action of the majority to carry a vote. So, if there are only three members present, it takes two affirmative votes to carry a vote. Because we have alternate members, there should be no reason to have only three members present. The importance of having alternate members is because this is a citizen's board comprised of citizens. There may be a conflict of interest arise where a member may recuse himself from the vote. The statute talks about a conflict for personal interest or financial gain. You don't want to put yourself or the City at risk of being challenged. The Code Enforcement board is the judge and jury in these cases. If the matter would go before a judge, he would say the people that come before the Board are entitled to a fair and unbiased hearing.

Linda Vogelpohl said that sometimes citizens go on line and see the member's names and call them with a concern. She was called and drove to view the concern. It was told to her later that she should not have gone to look at it and because she did go, if the matter came before the board she would have to remove herself from any vote.

Mike Duncan said who ever told her that was being very cautious. He doesn't feel, necessarily, that she would need to recuse herself if that situation came before this board. She would have to decide if she feels she would open herself or the City up to scrutiny by hearing the case. As a member of the community, she needs to be aware of things going on, but should send these types of inquiries to Carol. Mr. Duncan stated the statute is very clear that this board should make their decision based on the evidence presented at the hearing. You don't want to be tainted by anyone ahead of time. Mr. Duncan also said that some people complain to Carol about things that really aren't violations. If nothing happens, they might think Carol isn't doing her job and call one of the Board members. Carol is the Administrative Officer and Scott Davenport is the Citation Officer.

This Board would only come into play if a citation was issued and the recipients of the citation contested it.

Betty Dammert told Mr. Duncan that she should have abstained from the vote regarding Cliffwood Ct. He responded the vote was 5-0-0 so we should be okay, but she probably should have abstained from the vote and gone to the other room or gone home and let an alternate sit on the board that night.

Mr. Duncan stated the statute also indicates the minutes shall be kept of the proceedings and a vote of each member on any issue shall be recorded in the minutes. It's his understanding that this board has elected a secretary to record minutes. It's important to keep a record of who was present, what was voted on and who voted. The law says only hearings must be recorded but Mr. Duncan said it's a good idea to record all meetings. The tapes must be kept for 30 days per the statute.

Mr. Duncan went on to explain section five of the ordinance which is the "guts" of the ordinance. Section 5(A) quotes the statute stating that enforcement proceedings shall only be initiated by the issuance of a citation by a Code Enforcement Officer. Mr. Duncan explained this Board has no responsibilities until a citation has been issued, either because the citation is contested or the citation has been ignored and a fine must be set. If a citizen approaches this board with a problem, you have no action other than to avoid taking action.

There is usually activity on a case before it gets to this Board. Most of the time, the person doesn't know they are in violation and a telephone call or a visit will eliminate the problem.

Linda Vogelwohl asked if the Zoning Administrator should keep the Board informed on potential problems in the City to which Mr. Duncan replied this Board should know nothing unless a citation is issued. This Board could receive generic information like 40 calls were received and 37 were resolved with a phone call, three are ongoing. No citations have been written.

The Zoning Administrator sends a monthly report to Council but it has addresses on it and this Board should not see any addresses or names.

The rest of Section 5 states the staff can send a notice of violation letter before the citation. Paragraph D states what needs to be on the citation. They need to know what the City feels is wrong and what they need to do to fix it. Once the citation is issued, there is a fine indicated. If a person receives a citation, they need to fix the problem or pay the fine. Those cited may not fix the problem all the way and they usually don't pay the fine. Twice it has come to this board to set fines. In both cases the maximum fine was set.

Paragraph G states if the violator does not contest the citation in the time prescribed, the Code Enforcement Board shall impose the appropriate fine. This talks about how to serve the order. This should be tweaked to give the Zoning Administrator and the Board more guidance. Mr. Duncan and Carol have discussed serving the order by certified mail or hand delivering it or posting it on the property and then mailing it by regular mail. When hand delivering the order, if the violator is not home, if there is someone there at least 18 years old, the order can be handed to them and the contents explained and that satisfies the delivery requirement. Mr. Duncan said to be safe, we could hand deliver the order and send it certified mail.

In the citation, it explains how to challenge the citation. It explains that within so many days, they must ask for a hearing. Section 6 talks about that. When a citation is contested and the violator requests a hearing, a hearing will be set. A hearing is like a trial. It's intended to provide due process of the law. The Statute says they are entitled to legal representation.

Failure to appear at the hearing may result in a default against the person requesting the hearing.

At a hearing, there is a provision for the Board to have an advisor who is an attorney and a prosecutor who is the Zoning Administrator or Code Enforcement Officer. The Board may hire a separate attorney because the City Attorney can't do both roles, advise the Board and the act as the Prosecutor. All testimony at a hearing shall be taken under oath. The Board shall receive such evidence that a reasonable mind shall deem adequate to come to a conclusion.

The hearing shall be recorded. The tape must be kept no longer than 30 days after the hearing date.

Paragraph F states the Code Enforcement Board shall, based on the evidence presented to the Board at the hearing, determine whether a violation has occurred. If they saw something pertinent to the offence before the hearing, they could bring it up at the hearing; that they actually saw something, etc. and that is permissible. The Board could not bring up hearsay at the hearing.

When the evidence is presented, the Board could rule to uphold the violation and may order the offender to pay a civil fine up to the maximum or may order the offender to remedy the situation in a specified time.

To recap, once this Board sets a fine because the citation was ignored or there was a hearing and an order has been issued, this Board is finished. The Code Enforcement Officer or the Zoning Administrator could follow up on a situation at the next Code Enforcement meeting, but Mr. Duncan frowns on that because sometimes the same people are cited for other violations and it's best if this Board is not tainted in any way. If a member of this board really wants the information, they could call the Zoning Administrator and she could follow up with them.

The next section is the appeals. If the Board has issued an order, the violator may file an appeal with District Court within 30 days. The statute says the court shall be limited to a review of the record produced at the Code Enforcement hearing and shall make its decision on that. That was challenged and not upheld so if there is an appeal there would be a whole new trial at District Court.

Section 8 talks about civil fines, which was gone over, and Section 9 talks about liens and the process of liens. This is where the offender doesn't pay the fine imposed and we file a lien.

Section 10 talks about in addition to filing a lien, the City of Alexandria may institute other actions such as filling an injunction for monetary damages to enforce these liens and orders. Hopefully people will comply with the citations and it won't go this far.

Linda Vogelpohl mentioned when the last meeting was over she asked a question and was told that once the meeting was closed she should not talk about anything related to what just happened.

Mr. Duncan replied that every meeting in Kentucky has to follow the Open Meetings law and Open Records law which combined, are called the Sunshine Laws. If Mrs. Vogelpohl had made an appointment with Carol or the Mayor or even himself the next day or later that day and asked those same questions, there would be no problem. Mr. Duncan thought those questions were being asked when the meeting had adjourned and there was still a quorum present of the Board.

Linda Vogelpohl simply asked who she would ask the questions to which Mr. Duncan said that was fine. He explained if you ask a question that you want the Board to hear, it should be asked during the meeting, not after it. The Sunshine Laws are very strict. Public business should always be conducted in public.

Carol Hofstetter reiterated that if the violator did not contest the violation, they waived their right to a hearing and the Board shall enter an order that they are in violation and the Board's only job is to set the fine.

Mrs. Vogelpohl stated the violator could argue a point to probably try to reduce the fine at the meeting, to which Mr. Duncan agreed.

The Board thanked Mr. Duncan.

Mr. Pauly asked if anyone had a nomination for Secretary of the Board.

MOTION: Betty Dammert nominated Linda Vogelwohl as secretary, seconded by John Schneller.

All in favor, the motion passed with a 5-0-0 vote.

OLD BUSINESS - None

ADJOURNMENT:

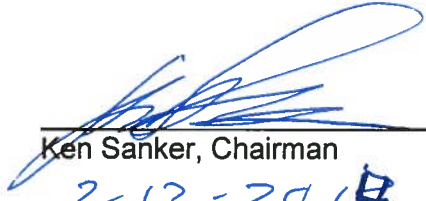
MOTION: Betty Dammert made a motion to adjourn, seconded by Linda Vogelwohl. All in favor, the motion passed 5-0-0.

Attested to and submitted by:

Karen Barto, City Clerk/Treasurer

Date

Approved: _____



Ken Sanker, Chairman

Date

2-13-2013