

MINUTES
PALM BEACH COUNTY
CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
November 10, 2016

1. CALL TO ORDER / CONVENE AS CBAA

Vice Chairman Dixon called the meeting to order at 2:00 p.m. The meeting was conducted in Room 1W-47, Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, Florida.

A. ROLL CALL

MEMBERS PRESENT:

Ron Dixon, Vice Chairman	Bart Rasper
Margie Walden	Gary Sullivan
Justin McIntosh	Rex Kirby
Peter Dzenutis	

MEMBERS ABSENT:

Marc Wiener, Chairman
Duane Drawdy

OTHERS PRESENT:

Doug Wise, Building Official of Palm Beach County
Dean Wells, Construction Services Coordinator
Shannon Fox, Assistant County Attorney
Anne Helfant, Assistant County Attorney
Jacquelyn Anderson, Senior Secretary
Alan M. Hess, Resident, Estates of Boynton Waters
Mark Lewis, Contractor on behalf of Paul & Carol Hart
Joseph Vaz, Resident, Estates of Boynton Waters
Robert A. Smith, Resident, Estates of Boynton Waters
Ellen Rappaport, Resident, Estates of Boynton Waters
Larry T. Cortez, Attorney on behalf of Alan Hess
John R. Glennon, Resident
Richard Link, Aspen Homes Construction
John S. Kennelly, Estates of Boynton Waters
Justin Kennelly, Estates of Boynton Waters

B. APPROVAL OF MINUTES

Mr. Sullivan made a motion to approve the minutes of October 13, 2016. Ms. Walden seconded the motion. The motion passed unanimously.

2. ADDITIONS & DELETIONS

Mr. Wise made a recommendation to reorder the agenda to hear the new case prior to the Boynton

Waters case due to the large amount of testimony expected.

There was no objection from the Board. Vice Chairman reordered the agenda to hear New Business first.

3. NEW BUSINESS

Board Secretary Jacquelyn Anderson swore in all witnesses who planned to testify.

A. 16-09 – 2748 W Canal St N, Belle Glade – Paul L. & Carol A. Hart

Mr. Wise presented the case on behalf of the County. A single family dwelling, approximately 700 sq ft on a property with three units, was identified as an unsafe structure. Construction Services Coordinator Dean Wells investigated the property. Staff's recommendation is that the Appellant be given an opportunity to be heard, and the Board can make a determination.

Assistant County Attorney Helfant requested the staff report be entered into evidence.

Mr. Lewis stated he is a state license building contractor who was asked to appear on behalf of Mr. and Mrs. Hart. He stated he and an architect were engaged by the Appellant two weeks prior to the hearing. He asked for additional time to obtain permits and submit permits to bring the structure up to current building codes.

In response to Board members questions, Mr. Lewis stated the home was vacant. The Appellant is requesting 60 days to obtain permits. There are no barriers around the property. The doors are secured, and he has asked the owners to get a dumpster to remove trash and debris from the property.

Board members questioned Staff and Appellant and discussion ensued.

Mr. Sullivan made a motion to grant the Appellant 60 days to move forward with applying for permits and if no permit application is submitted after 60 days, the Building Official may move forward with demolition.

The motion was seconded by Mr. McIntosh. The motion carried unanimously.

4. OLD BUSINESS

A. 16-03 – Estates of Boynton Waters – Multiple Properties – Estates of Boynton Waters Corporation

Mr. Wise presented an update of the eleven structures identified as unsafe in the Estates of Boynton Waters. He showed a PowerPoint presentation which included before and after photos of the eleven structures that were the subject of CBAA Case number 16-03. The challenge of bringing the building up to current code was already considered in the May 2016 hearing. Other structures were identified as having inactive permits; however, those structures are not a part of the case being heard before the Board, but were part of the discussion that the owner must work to complete.

Mr. Wise stated that because the owner had a significant number of homes to address, the Board

granted him two years to renew and complete the eleven buildings, with a condition to come back to review the progress. In response to a Commissioner inquiry, a status check was performed on all the structures on September 8, 2016. Photos were presented of the structures prior to the May 2016 hearing, at the time of the September 2016 status check, and November 9th, the day before the current hearing.

Permit for 6664 Cobia has been reactivated, and it is presumed the Appellant will begin reconstruction of the building shortly.

Properties located at 6778 Cobia, 6784 Cobia, 9298 Pearch, 6783 Cobia, 9293 Pearch, 6682 Cobia, 9310 Pearch, and 6717 Cobia have not had much change since the September status check. The permits for all of these properties were still inactive.

The property 6640 Cobia did not have much change since the September status check. New plans were submitted the day before the hearing.

The structure at 6766 Cobia had a problem with infestations of bees in the overhang and the trusses were damaged. Mr. Wise stated the Appellant was directed to remove the trusses. It was hoped that the trusses would have been completely removed; however, as of the day prior to the hearing the trusses were not completely removed, and the structure was not as far along as he would have liked. New plans for the structure were submitted the day before the hearing.

Mr. Wise stated other expired permits have been referred to the Code Enforcement Division.

Mr. Rasper asked if the Appellant was supposed to shore the walls of the structures.

Mr. Wise stated yes, there was discussion about them doing that.

Mr. Kennelly introduced himself, his brother Justin Kennelly, and construction supervisor Rich Link. He stated he had a status of each home and photos of progress on the homes and list of progress that has occurred. He stated that one of the homes did have a bee infestation, but that was not what caused the delay in removal of the trusses. He stated that the home in question has a two-story wall that relies upon the truss structure for support. He stated in order to remove the trusses he had to obtain engineered and fabricated large steel support beams to jack up the wall.

Mr. Kennelly stated all of the other homes have the truss structures fully removed either prior to the May hearing or since then. He stated in going through the list in addition to the homes subject to the action before the Board, he has renewed permits for the structures on lots 104, 119, 100, 103, 107, 110, 111, 113, 121 and 122.

Mr. Kennelly stated the steps to bring the homes up from the design criteria for 140 mph wind and electrical standards in effect at that time and all the other code standards and other changes that have occurred since construction began is a process that has not been done before and takes time to develop a plan. He stated he has never done it before, the Building Department has never done it before, and no one has ever done it before. He stated Architectural Studio and Design Odyssey have been working on the first set of homes within a family of homes. He stated Architectural Studio's plans were submitted first, and the County had a number of comments, and Architectural Studio came back and provided additional engineering for that, which was lot 112. The old roof was removed, all the waste was

removed. The building plans were revised to bring the structure up to current code.

Mr. Kennelly presented a report and pictures showing the progress of Lots 85, 108, 112, 125, 131, and 136. Included in his report was a completion schedule for lots 85, 112, 115, 136, 139, 95, 108, 123, 125, 131, and 138. He stated there is a scrivener's error for lot 123, which should show a construction start date of February 2017.

Board members questioned Staff and Appellant and discussion ensued.

Vice Chairman Dixon opened the floor to residents of the Estates of Boynton Waters to make comments. Residents were allotted three minutes to comment.

Attorney Cortez stated he represented homeowner Mr. Hess, and he was asked to speak regarding the two years granted to complete the homes. The concern is that two years is a long time without some type of benchmark along the way to prevent Aspen Homes from dragging its feet in the construction and getting to the end of the two years and asking for more time or not being done. Some of the concerns were that the homes were started six to eight years ago, and the homeowners have experienced no activity, and now there is an addition two years allowed without a guarantee the homes will be completed.

Mr. Hess stated he has lived there for ten years, and the home next to him has been a shell for seven years. His wife became sick with cancer and died. For years all they saw was the incomplete structures with roofs caved in, and his concern is that the Board gave the Appellant two years to finish the community without goals and benchmarks. He asked what requirements are made of Aspen Builders or the Kennellys. He asked what is going to be done to get the place finished instead of "shortly". He stated the trusses that were discussed were brought in four days prior to the hearing, there was a crane there, but the trusses were not installed. He stated "shortly" is a term that can mean anything.

Mr. Hess stated some concrete was poured, but every night people in the community walk in the neighborhood and some are children. He stated the structures are dangerous, and the children are playing in the houses no matter what kind of netting is placed around them. He stated immediately prior to the meeting in May, there was some effort made to get ready for the meeting. However, in last several months since then, nothing has been going on. There are workers who come and work four hours maybe two days a week and they leave. He stated one of the houses is being used as an auction block every weekend.

Mr. Hess stated the community is supposed to be upscale and could be beautiful, but there has been no real action that makes anyone confident that the community will ever be finished, or finished in the style it was started. He stated that he and the other homeowners would like to see some type of goals and requirements that must be done over the next 18 months to get the community up and finished.

Mr. Hess reached the end of his allotted time, and submitted pictures to the Board which were admitted into evidence.

Mr. Glennon stated he lives across the street from three of the houses. He stated for nine years the houses have been sitting there. He stated the workers will come and work three hours one day and leave for three days. He stated they come back, look around and talk for three hours, knock things down, leave the trash in front and leave. He said it was started over two weeks ago, and the hanging

debris is unbelievable. He stated about five years ago there was mold on the wood, and they had a guy climbing up and painting over the mold so no one can see it.

Mr. Glennon stated if he wanted to sell his house in the next year or two, the people driving through there would have to look at the garbage. He stated he has never seen anything like it his entire life. He stated builders come in do a development and are gone in two or three years. He stated this has been going on for ten years. He stated he has seen rats in the house, and they put cages out to catch the big animals. He stated he has seen snakes, and he has killed a couple of coral snakes.

Mr. Glennon stated this group of people is the most amoral group of people he has seen in his life. He stated they lie and never give a straight answer. He stated in ten years he has not seen one piece of paper from the HOA, nothing about budgets or anything else, which is against Florida statutes. He said they are supposed to give financing at the end of the year.

Mr. Glennon stated he is tired of the situation. He stated there is debris flying all over his yard for the past few years, and they are covering up the mold. He stated they only work a day and half per week. He stated the Board gave them two years, but they have not finished in ten years. He stated whenever he has visitors to his home, and they look at the debris and say what happened here. He asked the Board what is going to be done about the situation. He did not know how the man can get away with what he is doing. He stated he is fed up. He asked why something had not been done for ten years.

Mr. Glennon reached the end of his allotted time.

Ms. Rappaport stated the other homes in the community are beautiful, and that was one of the reasons they moved there twelve years ago. She stated unfortunately things are like they are now. She stated when she donates to Faith Farm and they come into the community, they will ask her what happened to the community; did they just start building and never finish. She stated they have never seen anything like this.

Ms. Rappaport stated that when Mr. Hess' wife was still alive they used to walk around together and she would say she was going to fix up her house and landscape so nice, as soon as they finish this house. She stated Mrs. Hess passed away before the house was ever finished.

Ms. Rappaport stated that she hopes she herself is still around when they finally finish. She stated the Board must give the builder benchmarks, or it will never happen. She asked to Board to remember what they have heard at the hearing that some of the permits were just submitted the day before the hearing. She stated they started to see a little work done this week, and even prior to the last hearing there was only a little work done. She stated the neighborhood was excited when they saw the first workers, but then they did not see them anymore, and even then it was only for a few hours. She stated she would like to know how many people are employed full time, including supervisors, working on the houses. She stated the whole community is looking for it, and they get excited when they see workers working.

Ms. Rappaport stated the community is asking the Board to put some benchmarks and do something to get the community completed. Ms. Rappaport concluded her testimony.

Mr. Vaz stated it has been ten years since he and his wife moved to the community, and they have been longing to see the development completed. He stated in the beginning everyone was very excited, and

he understands because of the market how things came to be as they are. He stated that he has seen many other developments all around them started and completed. He stated this has already taken ten years, and he is sure it will take another ten to fifteen years. He stated that's the reason they are there to speak to the Board to see what people who know about the building codes and developments can do for the community. He stated they were there to beg the Board to do something about it.

Mr. Vaz stated Palm Beach County is losing a lot of money on this. He stated Palm Beach County could be making a lot of money on the taxes. He asked how much money Palm Beach County is losing now. He also stated the children are playing in the community, and he stated if tomorrow one of the children gets hurt, who will be to blame. He asked if the Board will be taking the blame for it.

Mr. Vaz stated they have been going through this for ten years now. He asked how long they will have to continue to wait. He stated all the things that the developer has been doing is like whitewash on a tomb. He stated they also want to make sure the money that is committed to this development does not go to some other development, and they are concerned about that. He stated they would like to request that the developer has enough money to see that the project to get the development is completed. Mr. Vaz concluded his testimony.

Vice Chairman Dixon closed the public comment portion of the hearing.

Mr. Wise stated the developer mentioned several times that the Building Department has never dealt with anything like this before, and he does not know that this comment is accurate. He stated the Building Division deals with expired permits every day. He stated the Building Division mails out 150 to 200 letters every week to permit holders with expiring permits, so it is dealt with quite often. He stated he has not dealt with them to this scale.

Mr. Wise stated he commiserates with the homeowners in the community; however, he has seen whole projects with no residents with walls standing up five years or more with some of the biggest builders in the United States, when things went south a few years back. He stated it does happen, but it does not generally happen when people are living in between the units like in this community. He stated he has not seen this happen before, and it is unfortunate.

Mr. Wise stated if the Board chooses to put benchmarks on it, the Building Division will do its best to maintain them; however, there are some limitations to what the division can do because the Code gives an applicant a certain amount of time to complete it under the Code. He stated having all the permits active would be a good benchmark because all of the permits are not yet active. He stated there are a significant number on the list are inactive. He stated making the permits inactive involves submitting plans and paying all of the fees including increases in impact fees since the time the buildings were abandoned.

Mr. Wise stated he does not think all that needs to be done can be done in less than a year or a year and a half. He stated the developer has to fail before revisiting knocking the buildings down. He stated the Board has to decide what benchmarks need to be set, and the Building Division will enforce whatever benchmarks have been set. He asked that the Board make the benchmarks reasonable so the Building Division can enforce them.

Mr. Sullivan asked how many of the eleven permits were currently active.

Mr. Wise stated one.

Mr. Sullivan asked in six months.

Board members questioned Staff and discussion ensued.

Mr. Kennelly stated the only house that did not have trusses immediately removed required bracing engineering, and braces have been installed in the house. He also stated there was a crane failure three weeks prior to the hearing. He stated a lot of the work has come together in the past couple weeks, but it has been an on-going process. He stated the plans have been in the works a long time.

Board members questioned Staff and Appellant and discussion ensued.

Ms. Walden made a motion that all permits for the eleven structures need to be active within 6 months and if not, the County proceeds with demolition.

Mr. Sullivan seconded the motion.

Mr. Kirby asked to amend or add to the motion. He stated there was discussion as the last meeting that the buildings needed to be secured so that there is no access to the buildings. He stated the orange mesh fencing is not security, and there needs to be some sort of chain link fence up to secure access to the structures. He requested the motion be amended to say within fifteen days the buildings be secured, especially the ones not being worked on, with fencing and no trespassing signs to secure for no access.

Vice Chairman Dixon stated for the purposes of procedure, Mr. Kirby's statement should be a second motion. He asked if there was discussion on the main motion.

Mr. Sullivan stated he preferred to make Mr. Kirby's amendment a second motion.

Board members discussed the first motion.

Ms. Walden amended the first motion that all eleven permits must be active in six months, and Mr. Kennelly is required to reappear in three months to give an update as to the progress of all the permits: how many have been pulled, how many have been completed, and how many he is still waiting on.

Mr. Sullivan seconded the amended motion.

There was no discussion or additional comment on the amended motion. The motion carried unanimously.

Mr. Kirby made a motion that within fifteen days the properties be properly secured with chain link fences and no trespassing signs.

Board members discussed the motion among each other and with Staff.

Mr. Dzenutis seconded the motion.

Board members discussed the motion among each other and with Staff.

Mr. Kirby restated the motion that within thirty days the contractor developer is required to secure all properties with chain link fence and no trespassing signs; and if that is not accomplished with a report back from the Building Department, then the Board will revisit their opinion on giving the developer the extension already motioned and go back to looking at demolition of the properties.

There was no further discussion on the motion. The motion carried unanimously.

5. BOARD MEMBER COMMENTS

None.

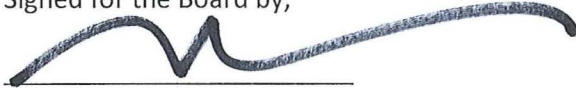
6. STAFF MEMBER COMMENTS

Mr. Wise stated he hoped there will be a quorum on December 8th if the Board does not have holiday plans. He also stated part of the budget includes funding for continuing education for license renewal for Board members. He stated there are classes being provided by the Building Division, BOAPBC, Gold Coast Builder, ABC and AGC. Board members should send the information to Jacquie to submit for approval.

7. ADJOURNMENT

Vice Chairman Dixon adjourned the meeting at approximately 3:20 p.m.

Signed for the Board by,



Marc Wiener
Chairman

Respectfully submitted,
Jacquelyn Anderson
Recording Secretary