

EXECUTIVE SUMMARY

To: Alan S. Johnson, Executive Director
From: Mark E. Bannon, Investigator
Re: C12-009 – Al Berg, Deputy Director Community Improvement; Lula Butler, Director Community Improvement; and Douglas Smith, Assistant City Manager, City of Delray Beach

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff through a formal sworn complaint submitted by Lisa Dowd, a Delray Beach resident. The Complaint is based on the alleged actions taken by various City employees, and in particular those of the Code Enforcement Division, by the issuance of a Violation Notice to Complainant by Code Enforcement Officer Lashay Ferguson. The City's Code Enforcement Division is under the Department of Community Improvement. Lula Butler is the Director of Community Improvement, and Al Berg is the Deputy Director. According to Complainant, the initial Notice of Violation was issued based on several complaints to the City by her neighbor, Nikki Korval. Complainant also makes an allegation that Korval has a close relationship with Code Enforcement employees based on her working in the commercial real estate field, and that this relationship has allowed Korval to use the City and Code Enforcement personnel to "harass us." Complainant has written letters to the City Manager, David Harden, as well as to Assistant City Manager Douglas Smith (acting City Manager during some of this period as Harden was on vacation) about what she feels is a unfair treatment of her, and a bias of the City for her neighbor, Nikki Korval. Mr. Smith advised her in a letter dated August 6, 2012, that she has been given sufficient time to comply with the code requirements, and that the matter would be referred to the Code Enforcement Board to make a determination as to whether she is in violation.

The specific basis of Dowd's Complaint against the named individuals and the City is as follows:

- Complainant alleges that Assistant City Manager Douglas Smith failed to properly investigate the violation issue before agreeing with Community Improvement Deputy Director Al Berg that that the violation should be sent to the Code Enforcement Board for a hearing. She also states that when she spoke with Smith, he did not appear to know the exact date of the hearing before the Code Enforcement Board.
- Complainant alleges that the Director of Community Improvement, Lula Butler, failed to contact her after Complainant had been told by Bauer that she would do so.
- Complainant alleges that Community Improvement Deputy Director Al Berg, improperly disallowed the sixty (60) day extension given to Complainant by Officer Ferguson on July 6, 2012, and ordered her to issue a Notice of Violation instead, without first contacting Complainant, or doing a proper investigation of the circumstances surrounding the alleged violation. She also alleges that this was done because of some improper relationship between Berg and/or other City employees and her neighbor, Nikki Korval.
- Complainant alleges that the initial hearing date of August 14, 2012 was changed to September 11, 2012, because Nikki Korval had requested the change, which she lists as another example of Korval's improper relationship with City employees.

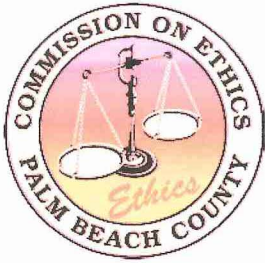
- **Analysis**

1. Whether Assistant City manager Douglas Smith "properly" investigated the issuance of a Notice of Violation to Complainant by Code Enforcement is not within the purview of the COE to determine. Therefore the Complaint against Respondent Smith lacks legal sufficiency to investigate, as even if true, this action would not result in a violation of the code of ethics.

2. The Complaint against Respondent Lula Butler, Director of Community Involvement that she failed to contact the Complainant after being advised by a City staff member of a complaint against one of her staff also lacks legal sufficiency, as this would not violate the code of ethics.
3. The Complaint against Al Berg that he disallowed an additional sixty (60) day extension for Complainant is a management decision that would not be under the jurisdiction of the COE, unless, as the Complainant alleges, this action was taken as an improper benefit to Nikki Korval. The Inquiry uncovered no evidence of this, Code Enforcement Officer Ferguson advised this allegation has no basis in fact, and the allegation itself is speculation on the part of the Complainant and is not based on the personal knowledge of the Complainant, and thus is also legally insufficient.
4. Finally, the Complaint that the Code Enforcement Board hearing change from August 14, 2012 to September 11, 2012 was done to accommodate Nikki Korval, is not borne out by the interviews conducted with City staff during this Inquiry, and is also not based on any personal knowledge of the Complainant, and is therefore also legally insufficient to open and investigation. Further, even if true, the rescheduling of a hearing date to accommodate the appearance of a potential witness for such hearing would not violate the code of ethics.

- **Conclusion**

The Complaint fails to state an allegation of a violation of the Code of Ethics, within the personal knowledge of the Complainant. Staff inquiry has uncovered no additional evidence to support a violation and, therefore, the Complaint lacks LEGAL SUFFICIENCY and should be DISMISSED as LEGALLY INSUFFICIENT.



PALM BEACH COUNTY COMMISSION ON ETHICS

2633 Vista Parkway, West Palm Beach, Florida 33411

Hotline: 877-766-5920 or 561-233-0724

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Name: Lisa Dowd
Address: 115 Highland Lane
City: Delray Beach, Florida Zip: 33444
Home #: - Work #: - Cell #: 561-306-3093

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Name: Al Berg, Lula Botler, Douglas Smith (Acting City Manager)
Address: 100 NW First Avenue
City: Delray Beach, Florida Zip: 33444
Home #: 561-243-7213 Work #: 561-243-7213 Cell #: -
Title/Office Held or Sought: code enforcement/acting city manager

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

☒ Allegation is against person in
County/Municipal Government

☐ Allegation is about County:
Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

Lisa A. Dowd
Signature of Person Making Complaint

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me
this 21 day of Aug, 2012, by

Lisa A. Dowd

(Name of Person Making Statement)

who is personally known to me ☐ or produced
identification ☒. Type of identification
produced:

[Signature]
(Signature of Notary Public, State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public)
PAUL JACQUES
MY COMMISSION # DD 937619
Bonded Thru Notary Public Underwriters



CITIZEN REPORTING FORM

Sheryl G. Steckler
Inspector General

Please provide some Information about the person(s), department, agency, entity, or vendor about which you are alleging a violation(s) of waste, fraud, misconduct, mismanagement or other abuse.

What is the name of the person(s) involved? Al Berg, Luke Butler, Douglas Smith

Which government/entity is involved? City of Delray Beach

Which department, division or agency is involved? code enforcement

Is there a vendor or contractor involved, if so who? -

What is the violation(s) that you wish to report?

please see attached

Have you reported this alleged violation(s) to any other authority? YES ☐ NO ☐

If yes, who? _____

-I am a victim of the sub-prime mortgage crisis and was in foreclosure. With the help of my attorney , I was able to get the foreclosure dismissed.

-After the foreclosure was dismissed , we began to fix up the property

-Since the foreclosure was dismissed we have put on a new roof, had the exterior of the house painted, put in a new door, completed interior work ,ripped out the yard and put in a new circular driveway .

-While we were in the process of doing this , the next door neighbor, Nikki Korval started calling the city on us-even though she is aware of all the work we are doing.

-we received a notice on the door in the spring, 2012. I immediately contacted the code enforcer, LaShay Ferguson. I explained the situation to her and she became aware that we were doing a lot of work on the property. She immediately understood that this was not just about sod, but that we had put on a new roof, just had the house painted,just ripped out the yard so that we could put in a new yard and a new driveway. Since that time , code enforcer LaShay Ferguson and I have been working together and keeping in contact regarding the progress of the jobs.

-July ,2012 we had the new circular driveway put in .Prior to putting in the driveway we had to obtain a survey with elevations and a permit, which took time.

-on Monday July 23, 2012, my fiancé was taking in the recycling bins and the neighbor, Nikki Korval approached my fiancé. She asked him a lot of questions as to the work we were doing and wanted time frames as to when we would be finished. She bragged to him about how expensive her home was and said it was worth \$ 750,000.00 while the other homes in the neighborhood are worth between \$200,000.00-\$ 300,000.00. She also bragged that she was in commercial real estate. She told my fiancé that "she was the nice neighbor because she was bringing up everyone else in the neighborhoods property values." When my fiancé told her that "she wasn't very nice", she responded "wait until you see how nice I am, I am going in to call the city on you again".

-Nikki Korval was also upset because someone had come out to take a look at her tree which has put out the power on the entire block several times. Nikki Korval had a large palm tree planted in the far northwest corner of her backyard. She lets the palms grow over the power lines. The palms and wires eventually begin to spark and then put out the power on the entire block. This has happened several times. The last time it happened , FPL told us to contact the city about it. We contacted the city and code enforcer, Rick Grant told me to contact FPL-Asphlund. When I contacted Asphlund they told me to contact the city. I contacted the city , to no avail. The city has not done anything about it. The palms are still hanging over the power lines and will knock out the power on the block again. I ask, why hasn't the city taken care of this? Does Nikki Korval know someone at the city who is helping her and doing her a favor?

There is another situation with Nikki Korval . When I previously had my house listed she wanted to buy my home for her father , she referred to my home as "a cottage.". However ; I did not sell her the house. I also believe that Nikki Korval is using the city to retaliate against us because of not selling her the

house and also because of someone coming out to look at her tree. I believe that Nikki Korval is using the city to harass us in an attempt to push us out of the house so that she can purchase the property. She also knows if anything sticks, the fines would be hefty. I bring this up because there is more to this situation.

-later that same day (July 23, 2012), code enforcer LaShay Ferguson was knocking on the door. She had with her a notice of hearing with a date of August 14, 2012 on it. I asked her why, as Ms. Ferguson and I had been in contact and working together. She replied, "it was her boss, Al Berg". Ms. Ferguson seemed upset about this. I said, "this is about the neighbor, isn't it?" La Shay Ferguson said she could not say, but it was her boss, Al Berg."

-approximately 5 minutes after LaShay Ferguson left the property, I received a call from Rick Grant-code enforcement. I explained the situation to Mr. Grant and told him about all of the work we are doing and were in the process of doing. Mr. Grant said that he would speak to his boss, Al Berg and call me right back. Rick Grant never called me back.

-Niikki Korval (neighbor) called the city immediately after our new circular driveway was installed.

-I then contacted the Palm Beach Ethics Commission and was given some options. One was to contact the City Manager or City Attorney. I contacted both.

-I received several e-mails from secretary to the City Manager, Gerri Bauer. (e-mails enclosed). Ms. Bauer said that City Manager, David Harden had retired. My letter was forwarded to Acting City Manager, Douglas Smith. In one of the e-mails, Ms. Bauer said that Ms. Butler (Al Berg's boss) would be contacting me on Monday. I never heard from Ms. Butler.

-I left to go up north to pick up my granddaughter and bring her back to Florida for a visit. On August 6, 2012 before I left, I contacted code enforcement and spoke with Danny Cleckley. Ms. Cleckley said that the hearing date was not on August 14, 2012 but was now on September 6, 2012. However, I never received any notice from code enforcement regarding this new date or received anything in the mail regarding a new date. This was also unfortunate as I had scheduled my trip around this date.

-on August 11, 2012 I returned from my trip with my granddaughter, I had a letter waiting from Acting City Manager Douglas Smith. In Mr. Smith's letter it stated that the hearing was on August 14, 2012 (not on September 6, 2012).

-I contacted Douglas Smith on Monday August 13, 2012 and asked him about the date, as I had been told by Danny Cleckley that the date was now September 6, 2012. Mr. Smith replied that he thought the date was September 6th and not on August 14th, but said "he was not sure." He said he would have "to check on it." Mr. Smith said that he would "call me right back." I waited all day for his call and did not hear back from him. I was concerned because I had not prepared for any type of hearing. I finally called Mr. Smith around 4:00 p.m. Mr. Smith said that he thought "they were going to call me back." I said that they hadn't contacted me. However; Mr. Smith is the one who told me that he would call me back. Mr. Smith then said that the "September 6th date will stand".

- I am also concerned by Mr. Smith's response letter. There are many issues that Mr. Smith did not address. He doesn't seem to understand the entire situation. He seems to make excuses for Nikki Korval and Al Berg. Mr. Smith mentions in his letter, that it is "taking us 6 months to put in sod." Mr. Smith seems to think that the situation is just about us putting in sod. However, this is not just about sod, as we are doing a lot of renovations. I do not believe that Mr. Smith has properly investigated the situation. If he had, he would have known that this situation is not just about putting in sod. He would have known that we had just put on a new roof, just had the house painted, just ripped out the yard—in order to put in a new yard. He would have known that we just installed a new circular driveway. He would have known that we are going to install the new sod and landscaping as soon as the issues with the contractor are worked out. Mr. Smith would have known that we were in contact with code enforcer, La Shay Ferguson and that Ms. Ferguson was aware of all of the work we were doing. If Mr. Smith had investigated the situation properly he would have known that it took weeks for us to obtain the permit to install the driveway and that it took weeks to obtain surveys for the new driveway and the new roof. I also have a concern that when Douglas Smith wrote me the letter, that he didn't even bother to check for the proper dates regarding the hearing. (please read my response letter to Mr. Smith-enclosed)

-both Al Berg and Douglas Smith seem to think that this is only about us not putting in new sod yet. They have not properly investigated the situation and have taken whatever Nikki Korval has said at face value. Al Berg never even had the decency or courtesy to contact us after he spoke with Nikki Korval on July 23, 2012. He never even contacted us to find out what work we had completed and are finishing. He simply went on what Nikki Korval told him and issued a hearing date that same day. Al Berg and Douglas Smith have not acknowledged that we have already done a lot of renovations on the property and just had the circular driveway installed. The sod will be going in very soon, after the contractor corrects the mistakes he made on the driveway installation.

- then on Saturday, August 18, 2012, I received a certified letter from the code enforcement department. It was a notice of hearing with a new date- now saying the hearing was on September 11, 2012.

-on August 20, 2012, I contacted Danny Cleckley regarding the new notice of hearing which now said September 11, 2012. She said the hearing is now on September 11, 2012 and not on September 6, 2012. I told her that I would be out of town, that I had to bring my granddaughter back". I asked her if I could have the hearing moved to the end of September as I am taking my granddaughter back up north. Ms. Cleckley said that she cannot change the date, that I would have to contact Al Berg." I think there may have been something posted in the computer. I asked her about the September 6, 2012 date. Ms. Cleckley explained to me that they only have hearings on the second Tuesday of each month and that the September 6th date was more of an informal meeting and that the September 11th date was a formal hearing. I did not know any of this until I spoke with her.

-After the conversation with Danny Cleckley, I realized that the neighbor, Nikki Korval was out of town on the original August 14th hearing date. I now believe that the date was changed from August 14th to September 6th and then to September 11th to accommodate the neighbor, Nikki Korval.

-I have changed my vacation plans several times to accommodate these changing dates. I will not be in town for the September 11th hearing.

-I am extremely concerned that Nikki Korval has a connection and/or a relationship with Al Berg or someone else at the city. Nikki Korval was bragging about being in commercial real estate and she would know people in code enforcement and building and zoning. I believe that someone is doing a favor for her and accommodating her.

-This would explain the changing dates and the city continually appeasing of Nikki Korval. This would also explain the hearing dates changing from August 14, 2012 to September 6, 2012 and then to September 11, 2012-since Nikki Korval was out of town on August 14, 2012.

I am asking that the ethics commission thoroughly investigate this situation. I am very concerned that someone at the city is doing a favor for Nikki Korval. Nikki Korval is using the city as a means to harass us. Al Berg is allowing this to happen. Nikki Korval knows and sees the work we are doing, yet she continues to call the city on us. I am asking that this be stopped and that the hearing date be stricken so that we can finish the work without the harassment from Nikki Korval, Al Berg and the city. The only reason we are having these problems is because the neighbor, Nikki Korval is using the city to harass us and the city is allowing this. The only reason Al Berg issued the notice of hearing that day on July 23, 2012 with a hearing date of August 14, 2012 is because Nikki Korval called him that day (July 23, 2012) the day she threatened my fiancé. Since then the hearing dates have been changed twice.

I am also asking your office to investigate the lack of professionalism coming from the code enforcement office. I am asking you to investigate Al Berg's continued favoritism of Nikki Korval and his bias towards her, Al Berg not investigating the entire situation, Lula Butler (Al Berg's boss) not contacting me as she said she would, Rick Grant not contacting me as he said he would. I am asking that you investigate Acting City Manager's Douglas Smith's complete lack of investigation into this situation, Mr. Smith's not being able to get the dates correct and why he is protecting and making excuses for Al Berg, Nikki Korval, Lula Butler etc.

I am also concerned that Nikki Korval has some type of connection with Al Berg or others within the code enforcement office and the city office. Nikki Korval is in commercial real estate and would know people in the code enforcement department and building and zoning. I am asking that the Palm Beach Ethics Commission thoroughly investigate this.

I also want to know what is behind the date changes and why Douglas Smith is not addressing this situation properly. I would like to know about the conversations between Al Berg and Nikki Korval and any other city officials or employees. I would like to know if the dates were changed to accommodate Nikki Korval's vacation schedule and her schedule. I would like to know why the dates were changed? I would like to know why Nikki Korval's tree is still hanging over the wires?

I have changed my vacation dates several times not to accommodate all of these changing dates. I will not be in town for the hearing on September 11, 2012. It is my granddaughters birthday and I am planning to stay for her birthday.

I am asking that the Palm Beach Ethics Commission thoroughly investigate this situation.

Sincerely,

Lisa A. Dowd

115 Highland Lane

Delray Beach, Florida 33444

[e-mail-ls_dwd@yahoo.com](mailto:dwd@yahoo.com)

phone-(561) 306-3093

CODE ENFORCEMENT BOARD
CITY OF DELRAY BEACH
100 NW FIRST AVENUE
DELRAY BEACH, FLORIDA 33444
(561) 243-7213

NOTICE OF FORMAL HEARING

IN THE MATTER OF:

DOWD LISA ANN
115 HIGHLAND LN
DELRAY BEACH, FL 33444-4153

CEB CASE NO. 12-00024947

The City of Delray Beach Code Enforcement Division previously notified you concerning alleged violation(s) of one or more provisions of the City of Delray Beach Code of Ordinances and/or Land Development Regulations as enumerated on the attached violation detail page(s). The attached violation(s) is alleged to occur at:

BONNIECREST SUB
LT 37

whose address is: 115 HIGHLAND LN.

The Code Enforcement Division determined that the alleged violation(s) has not been corrected, and now requests that the Code Enforcement Board hear this matter on Tuesday, August 14, 2012 at 1:30 P.M. at the City of Delray Beach Commission Chambers, located at 100 N.W. 1st Avenue, Delray Beach, Florida.

It is to your benefit and I encourage you to appear before the Board at the above time in order to call witnesses, to testify, and/or to present evidence on your behalf. You may retain an attorney to represent you at the hearing.

If you choose not to attend the hearing, the Code Enforcement Board may make its ruling solely on the evidence submitted by the Code Enforcement Division.

IF THE CODE ENFORCEMENT BOARD FINDS THAT YOU ARE IN VIOLATION OF THE ATTACHED ORDINANCE(S), IT MAY ORDER THAT YOU COMPLY WITH THE ORDINANCE(S) AND, IN THE EVENT OF FAILURE TO COMPLY, PROVIDE FOR A FINE NOT TO EXCEED \$250 PER DAY PER VIOLATION OR \$500 PER DAY PER VIOLATION IN THE CASE OF A REPEAT VIOLATION(S) PLUS AN ADDITIONAL ADMINISTRATIVE FEE.

copy of notice
of hearing dropped
off by Lashay
ferguson + sent
via mail

For further information, please read the attached Information for Formal Hearing materials, and, if applicable, consult with your attorney. You can call us at the above phone number if you need more assistance. The Code Enforcement Board may assess a fine for noncompliance with a previously issued Code Enforcement Board order without holding another formal hearing. Fines for noncompliance may be recorded as liens against real and personal property in official records. The City of Delray Beach Code Enforcement Board operates pursuant to Chapter 161 Florida Statutes, and Chapter 17 City of Delray Beach Code of Ordinances.

Please be advised that if you decide to appeal the Board's decision to a court of competent jurisdiction, you will need a record of the proceedings. For this purpose, you may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and the evidence upon which the appeal is to be based. The City does not provide such a record or transcription.

The City shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the City. Please contact Doug Smith, (561) 243-7144 at least twenty-four (24) hours prior to the program or activity in order for the City to reasonably accommodate your request.

By: Danise Cleckley, Code Enforcement Board Clerk
(561) 243-7213

E NUMBER 12-00024947
PROPERTY ADDRESS 115 HIGHLAND LN

VIOLATION: 100.07 (A&B) QUANTITY: 1
DESCRIPTION: YARDS AND LANDSCAPE AREAS DATE: 2/15/12
LOCATION:

NARRATIVE :

The front and side yard areas must be sodded with healthy grass or covered with appropriate ground cover. Please contact Peter Anwar 243-7226 for questions regarding proper ground cover.

ORDINANCE DESCRIPTION :

ANY PORTION OF A LOT NOT COVERED BY A BUILDING OR A STRUCTURE OR OTHERWISE DEVOTED TO PARKING, SERVICE DRIVE, OR WALKWAY SHALL BE SODDED WITH A HEALTHY GRASS OR OTHER APPROPRIATE GROUND COVER AND SHALL BE MAINTAINED IN A NEAT AND ORDERLY MANNER.

ALL LANDSCAPE MATERIALS, WHETHER REQUIRED OR OPTIONAL, SHALL BE MAINTAINED IN A HEALTHY LIVE CONDITION SO AS TO PRESENT A NEAT AND ATTRACTIVE APPEARANCE AND SO AS TO DISCOURAGE THE COLLECTION OF TRASH OR DEBRIS OR INFESTATION BY PESTS. TREES, SHRUBS, GROUND COVER, AND GRASSES SHALL BE TRIMMED IN A MANNER CONSISTENT WITH GOOD LANDSCAPING PRACTICES AND OTHERWISE AS REQUIRED BY THE CODE.

CORRECTIVE ACTION REQUIRED :

SOD FRONT AND SIDE YARD AREAS WHERE EXISTING SOD IS MISSING, DEAD OR WEED INFESTED. APPROPRIATE GROUND COVERS MAY BE USED. CALL CODE ENFORCEMENT FOR ADDITIONAL INFORMATION.

CODE ENFORCEMENT BOARD
CITY OF DELRAY BEACH
100 NW FIRST AVENUE
DELRAY BEACH, FLORIDA 33444
(361) 243-7213

NOTICE OF FORMAL HEARING

IN THE MATTER OF:

DOWD LISA ANN
115 HIGHLAND LN
DELRAY BEACH, FL 33444

CEB CASE NO. 11-04947

The City of Delray Beach Code Enforcement Division previously notified you concerning alleged violation(s) of one or more provisions of the City of Delray Beach Code of Ordinances and/or Land Development Regulations as enumerated on the attached violation detail page(s). The attached violation(s) is alleged to occur at:

BONNIECREST SUB
LT 37

whose address is: 115 HIGHLAND LN.

The Code Enforcement Division determined that the alleged violation(s) has not been corrected, and now requests that the Code Enforcement Board hear this matter on Tuesday, **SEPTEMBER 11, 2012** at 1:30 P.M. at the City of Delray Beach Commission Chambers, located at 100 N.W. 1st Avenue, Delray Beach, Florida.

It is to your benefit and I encourage you to appear before the Board at the above time in order to call witnesses, to testify, and/or to present evidence on your behalf. You may retain an attorney to represent you at the hearing.

If you choose not to attend the hearing, the Code Enforcement Board may make its ruling solely on the evidence submitted by the Code Enforcement Division.

IF THE CODE ENFORCEMENT BOARD FINDS THAT YOU ARE IN VIOLATION OF THE ATTACHED ORDINANCE(S), IT MAY ORDER THAT YOU COMPLY WITH THE ORDINANCE(S) AND, IN THE EVENT OF FAILURE TO COMPLY, PROVIDE FOR A FINE NOT TO EXCEED \$250 PER DAY PER VIOLATION OR \$500 PER DAY PER VIOLATION IN THE CASE OF A REPEAT VIOLATION(S) PLUS AN ADDITIONAL ADMINISTRATIVE FEE.

copy of new
notice of hearing
received by
certified mail received
on Sat. 8-18-12

For further information, please read the attached Information for Formal Hearing materials, and, if applicable, consult with your attorney. You can call us at the above phone number if you need more assistance. The Code Enforcement Board may assess a fine for noncompliance with a previously issued Code Enforcement Board Order without holding another formal hearing. Fines for noncompliance may be recorded as liens against real and personal property in official records. The City of Delray Beach Code Enforcement Board operates pursuant to Chapter 162, Florida Statutes and Chapter 17, City of Delray Beach Code of Ordinances.

Please be advised that if you decide to appeal the Board's decision to a court of competent jurisdiction, you will need a record of the proceedings. For this purpose, you may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and the evidence upon which the appeal is to be based. The City does not provide such a record or transcription.

The City shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the City. Please contact Doug Smith, (561) 243-7144 at least twenty-four (24) hours prior to the program or activity in order for the City to reasonably accommodate your request.

By: Danise Cleckley, Code Enforcement Board Clerk
(561) 243-7213

ASE NUMBER 12-00024947
PROPERTY ADDRESS 115 HIGHLAND LN

VIOLATION: 100.07 (A&B) QUANTITY: 1
DESCRIPTION: YARDS AND LANDSCAPE AREAS DATE: 2/15/12
LOCATION:

NARRATIVE :

The front and side yard areas must be sodded with healthy grass or covered with appropriate ground cover. Please contact Peter Anwar 248-226 for questions regarding proper ground cover.

ORDINANCE DESCRIPTION :

ANY PORTION OF A LOT NOT COVERED BY A BUILDING OR A STRUCTURE OR OTHERWISE DEVOTED TO PARKING, SERVICE DRIVE, OR WALKWAY SHALL BE SODDED WITH A HEALTHY GRASS OR OTHER APPROPRIATE GROUND COVER AND SHALL BE MAINTAINED IN A NEAT AND ORDERLY MANNER.

ALL LANDSCAPE MATERIALS, WHETHER REQUIRED OR OPTIONAL, SHALL BE MAINTAINED IN A HEALTHY LIVE CONDITION SO AS TO PRESENT A NEAT AND ATTRACTIVE APPEARANCE AND SO AS TO DISCOURAGE THE COLLECTION OF TRASH OR DEBRIS OR INFESTATION BY PESTS. TREES, SHRUBS, GROUND COVER, AND GRASSES SHALL BE TRIMMED IN A MANNER CONSISTENT WITH GOOD LANDSCAPING PRACTICES AND OTHERWISE AS REQUIRED BY THE CODE.

CORRECTIVE ACTION REQUIRED :

SOD FRONT AND SIDE YARD AREAS WHERE EXISTING SOD IS MISSING, DEAD OR WEED INFESTED. APPROPRIATE GROUND COVERS MAY BE USED. CALL CODE ENFORCEMENT FOR ADDITIONAL INFORMATION.

Dear Mr. Harden,

7-23-12

I am contacting you in regards to a city employee, Alan Berg.

We were contacted by code enforcement months ago regarding work that needed to be done on our property. I have been in continued contact with code enforcer LaShay Ferguson. Ms. Ferguson and I have had a good repore.

The property was in foreclosure and the foreclosure was recently dismissed. Like many people in this recession , money has been tight. Our plans were to put in a new front and back yard and a new driveway. While we were in the process of this, we received a notice from code enforcement. We have since found out that our neighbor at 109 Highland Lane is the person who is calling in the complaints.

So far, we have put on a new roof, had the house painted and put in a new driveway. Thus far, we have spent in excess of \$14,000.00

We had the yard ripped out and just had a new driveway installed. The contractor still has some things to repair before the job is complete. We are in the process of working this out with the contractor.

As you know, projects like this take time and money. The process of putting in the driveway has cost us more money and time than we had anticipated . It took weeks to get the survey with elevations and the permit approved.

After the driveway is completed, we are planning to put in the sod. We cannot put in the sod until the driveway is completed, as the machines will tear up the new sod.

That brings me to today 7-23-12. My fiancé was bringing in the recycling bins this morning and was approached by the above mentioned neighbor, Niki Korval. Ms. Korval proceeded to ask him question after question regarding the work we are doing on the property . She was relentless and wanted to know time frames and work plans. Ms. Korval also said she was angry that we had contacted the city regarding a palm tree in her yard which has knocked out the power numerous times on the entire block . The last time her tree knocked out the power, FPL told us to contact the city ; which we did. She told my fiance that she was going in to call the city, he told her "that was fine ,as we are working with the city and in contact with them."

Later that day, after Ms. Korval contacted the city; code enforcer , LaShay Ferguson knocked at the door. She had a form in her hand and wanted me to sign it. She told me that there was a hearing set for August 14, 2012 . I replied, " this is because of the neighbors phone call isn't it ?" LaShay responded that her boss, Al Berg sent her out to the property. I told her that I had not been notified of any hearing. She said it had been set today. I said " it was set today because of

a neighbors phone call?" Ms. Ferguson seemed uncomfortable that her boss had sent her out , as Ms. Ferguson and I have been in continued contact regarding the work being done at the property.

I then received a call from Rick Grant and explained the entire situation to him . He was sympathetic and said he will speak to his boss (Al Berg) and call me back. I have not heard from him yet.

The reason for my complaint is we have been actively working on the property , per the cities requests. We are right in the middle of the job and the same neighbor complains in the middle of the job and then Mr. Berg sets a hearing date and sends Ms. Ferguson out to the property because of a pushy neighbor?

Mr. Berg never contacted us regarding the situation . He could have called us and asked about the work schedule and our plans before caving into a neighbor who bullied him.

Anyone can see by looking at the property that we are in the process of putting in a new yard and driveway. It is absolutely outrageous that Al Berg would do this to us.

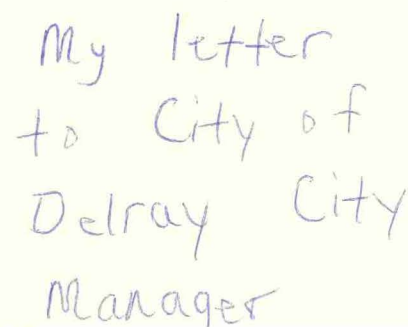
I feel we are being harassed by both the neighbor and the city- the city , because a neighbor is pushing.

I am asking you to please address this situation and Mr. Berg. We are doing everything that has been asked of us and this is causing us enormous stress.

Sincerely,

Lisa A. Dowd

561-306-3093



My letter
to City of
Delray City
Manager

CITY OF DELRAY BEACH



August 6, 2012

Ms. Lisa Dowd
115 Highland Lane
Delray Beach, FL 33444

Dear Ms. Dowd:

I reviewed your letter concerning the property at 115 Highland Lane. According to our records, the Code Officer issued a violation notice to you on February 15, 2012 for not having proper ground cover under case #12-24947. From my discussions with staff, you completely removed all plantings from your entire property in January 2012.

I agree that you have had a good rapport with the Code Officer assigned to your area. That is documented with the fact that she agreed to three (3) extensions at your request, between March 8 and July 6, giving you additional time to comply with the violation prior to having the case heard by the Code Enforcement Board. The July 6 request was for an additional 60 days.

It is also correct that we received a complaint from an adjacent neighbor regarding the length of time it is taking for you to put the yard back together. The assigned Code Enforcement Officer delivered to you, at the request of Mr. Berg, a formal Code Board Hearing notice for August 14, 2012. Prior to granting your third extension request, the Code Officer should have consulted with her supervisor. The Code Enforcement Board is able to consider your financial constraints and other information that you deem important and relevant to your situation, and it is very likely that they will give you an additional 60 days to install the sod.

While we understand projects take time, we are responsible for providing fair service to both you and your neighbors. While we do respond to complaints, in this case, Mr. Berg felt that the Code Officer was cooperative and provided you more than six (6) months to finish the yard. Thus, the Code Enforcement Board hearing should work effectively for you and your situation. It will also help us, when a neighbor complains, to explain your status as granted by the Code Enforcement Board.

Sincerely,

Douglas E. Smith
Acting City Manager

DES/gb

cc: Lula Butler, Director of Community Improvement

Acting City
Manager - Douglas
Smith's response
letter

Dear Mr. Smith,

8-18-12

This letter is in response to the letter I received from you on 8-6-12.

I am concerned that your letter seems to make excuses for Al Berg's behavior and neighbor Nikki Korval. It seems that you may not understand the entire situation. I am also concerned as there are many items that you did not address. Such as;

-Mr. Rick Grant never returned the call on 7-23-12 as he said he would. As you know, Mr. Grant called me in the late afternoon of 7-23-12. Mr. Grant said he was going to speak to his boss, Al Berg and call me back. Mr. Grant never called back.

-you did not address the fact that the neighbor, Nikki Korval is using the city as a means to harrass us.

-you did not address Al Berg's complete lack of professionalism regarding this matter. You did not address that the only reason Mr. Berg issued the August hearing date that day on July 23, 2012 was because he was strong armed by the neighbor who is using the city as a means to harrass. This is the only reason we received the notice of hearing from Al Berg. Ms. Korval threatened my fiancé the morning of July 23, 2012 and said "wait until you see how nice I am, I'm going in to call the city on you." This was after she was bragging of her home being "worth \$750,000.00" and bringing up property values in the neighborhood -(in a neighborhood where the homes are worth between \$200,000.00-\$300,000.00). This woman is also upset because we contacted the city and FPL regarding an overgrown tree she has which is hitting the wires. This tree has knocked out the power in the entire neighborhood several times. The last time this happened when FPL was in our backyard fixing the wires and trimming their tree, FPL told us to contact the city regarding the tree. I contacted the city and Rick Grant told me to contact FPL -Ashphlund. In turn, FPL told us to contact the City of Delray. I did contact FPL and the city and Nikki Korval was angry about that. She also told my fiancé so on the morning of July 23, 2012. I bring this up to you because there is more to this situation.

Now I see from the recent letter you sent me, that Mr. Berg actually moved up the hearing date from September 6, 2012 to August 14, 2012. You have not addressed Mr. Berg's complete lack of professionalism in handling this. When I called the city code enforcement on 8-6-12 Danny told me that the hearing was on September 6, 2012 and not on August 14, 2012 - the date on the document that Ms. Ferguson dropped off on July 23, 2012-the same day that neighbor Nikki Korval called Al Berg.

-I then received a letter from you which stated that the hearing date was on August 14, 2012. This letter was received after I spoke with Danny who said the date was actually on September 6, 2012. I then had to call you to verify this. You then said that you thought it was set for September 6, 2012, but weren't sure. You said you would check on it and call me right back. I waited the rest of the day for your call and did not hear back from you. I finally called you back around 4:00 p.m and you said that you thought the other department was calling me back. However; when we spoke you told me that you would call me back. I was waiting for your call as I did not know if I had to prepare for a hearing the next day. This again, is another complete lack of professionalism from the code enforcement office and the city.

-in your letter to me you speak of us “not putting in the sod”. However you fail to include that this is not just about sod. This is about putting on a new roof, putting in a new driveway, having the house painted, landscaping , obtaining permits and surveys etc. All of this being done after a foreclosure was dismissed.

-you did not address my concern of Al Berg possibly having a personal or business relationship with Ms. Korval . As Ms. Korval bragged about how expensive her home was (saying it was worth \$ 750,000.00) and how she was in real estate. It is after these comments that Ms. Korval said, “wait until you see how nice I am, I am going inside to call the city on you.” After Ms. Korval called the city on us, the same day is when LaShay Ferguson showed up at our door with a notice of hearing which was set by Al Berg , immediately after Nikki Korval’s call to him. I now find out in you recent letter that there was actually a hearing date scheduled for September 6, 2012 and Mr. Berg actually moved up the hearing to August 14,2012. How could this be? Also, I was never notified verbally or in writing that there was even a hearing date scheduled for September 6, 2012. The only way I found out about that date is because I contacted code enforcement on August 6, 2012 and spoke with Danny and she told me the date was set for September 6, 2012. This is another incident of lack of professionalism coming from the code enforcement office.

-in your letter you state that “Mr. Berg felt that the code officer was cooperative and provided more than 6 months to finish the yard.” Mr. Smith you fail to address that it takes more than 6 mos . to paint a house, put on a roof , put in a new driveway, install sod, obtain permits, obtain surveys and landscaping. The reason La Shay Ferguson was working with us was because she was aware that we were doing all of this. She realized after speaking to me , that this was not just about sod. The only reason we are having these problems now and have a hearing date, is because Nikki Korval is using the city to harass us.

-you say that Al Berg felt “ the code officer was more than cooperative” ..then why did Al Berg move up the hearing date from September 6, 2012 to August 14, 2012??? He moved the date up the same day he spoke to Nikki Korval.

-it is apparent that Al Berg was either doing Nikki Korval a favor or allowing her to use the city to harass as. As Mr. Berg immediately set a hearing date for 8-14-12, this was on the same day (July 23, 2012) in which he spoke with Nikki Korval. As we know, this date was not even valid as there was never a hearing on that day. Al Berg did not even have the consideration to contact us or have LaShay Ferguson contact us to ask us about the work that was being done on the property or to get our side of the story .

In paragraph 2 you speak of Ms. Ferguson and I having a good rapport. You go on to say that this is “documented in the fact that she agreed to three extensions at your request between March 8 and July 6 giving you additional time to comply with the violation prior to having the case heard by the Code Enforcement Board.”

Mr. Smith you fail to say that I was never informed about these extension dates. You fail to address the fact that LaShay Ferguson and I were in contact regarding the progression of the job. You did not address the fact that prior to the violation that we were already in the process of completing the work on the house. This is the reason we removed the yard-to put in a new one. You did not address that Ms.

Ferguson was well aware that we had just put on a new roof, just had the house painted and were in the process of putting in a new circular driveway. Ms. Ferguson and I had been in contact throughout this process. The reason we were in contact was because I was updating her on the progress and we were working together in completing this job. We had to get permits for the driveway and a survey-which took a lot of time. Once the permit and survey were obtained, we then had the new driveway installed. Nikki Korval called the city on us right after the driveway was installed. Ms. Ferguson was aware of all of this. It is completely unfair of you to say that Ms. Ferguson should have received permission from her supervisor before granting another extension-an extension that I was never notified about. The reason this is unfair is because Ms. Ferguson knew that we were completing the work. There was no reason for her to contact her supervisor as we were in contact with each other and we were completing the work. It is unfair of you to lay the blame on Ms. Ferguson and not on Al Berg. The only reason we are having these problems is because Nikki Korval keeps calling the city while we are in the process of completing the work.

Ms. Gerri Bauer sent me an e-mail on 7-27-12 stating that Mr. Berg's supervisor Ms. Butler was going to contact me on "Monday". I never heard from Ms. Butler. Another incident of the lack of professionalism by the code enforcement office -on Ms. Butler's part. Gerri Bauer is the only one from your office who has acted professionally. (e-mails can be provided)

My question to you is, how can a homeowner who is in the middle of completing several improvements be getting violations and hearing dates when they are in the process of completing the work. The answer is that the code enforcement department, Al Berg is allowing the neighbor Nikki Korval to use the city as a means to harass us. This is completely unacceptable.

This is also interfering with my vacation plans. I went up north to pick up my granddaughter and bring her back to Florida for 2 weeks. I scheduled the trip around the August 14th hearing date-which never was. When I bring her back, I now have to schedule the trip around the September 6th hearing date. It is her 4th birthday and I was planning to stay to celebrate with her and now I have to return for another hearing date.

While in the midst of completing this letter, I have now received a certified letter from the code enforcement office which states that the hearing date is now on September 11, 2012.

The driveway is installed but the contractor still has some things he has to fix per the city inspector and homeowner. We are in the process of working this out. As soon as he is finished, the sod will be installed. We cannot possibly install the sod until the contractor is finished making adjustments as his machines will tear up any new sod.

I again ask that the hearing date be stricken so that we can the finish work without the harassment and all these unnecessary interruptions.

Sincerely,

Lisa A. Dowd

115 Highland Lane

Delray Beach, Florida

33444

my response
letter to
Acting City
Manager -
Douglas Smith

Subject: Fw: RE: Employee Al Berg
From: Lisa Dowd (ls_dwd@yahoo.com)
To: thearrell@yahoo.com;
Date: Sunday, August 5, 2012 1:44 PM

--- On Wed, 8/1/12, Bauer, Gerri <Bauer@mydelraybeach.com> wrote:

From: Bauer, Gerri <Bauer@mydelraybeach.com>
Subject: RE: Employee Al Berg
To: "Lisa Dowd" <ls_dwd@yahoo.com>
Cc: "Butler, Lula" <Butler@mydelraybeach.com>, "Quinlan, Donna" <Quinlan@mydelraybeach.com>
Date: Wednesday, August 1, 2012, 3:21 PM

Ms. Dowd,

I do apologize, and have no idea what has caused the delay. Your email to me will be forwarded to Mrs. Butler for a response.

Gerri Bauer
Executive Secretary to the City Manager
City of Delray Beach
100 NW 1 Avenue
Delray Beach, FL 33444
(Office)
561-243-7199 (FAX)
bauer@mydelraybeach.com
Member of NAPW and AEAP

From: Lisa Dowd [mailto:ls_dwd@yahoo.com]
Sent: Wednesday, August 01, 2012 3:08 PM
To: Bauer, Gerri
Subject: RE: Employee Al Berg

Dear Ms. Bauer,

I wanted to touch base with you. I still have not heard from Ms. Butler or anyone from the city regarding the situation with Mr. Berg.

Thanks,
Lisa Dowd

--- On Fri, 7/27/12, Bauer, Gerri <Bauer@mydelraybeach.com> wrote:

From: Bauer, Gerri <Bauer@mydelraybeach.com>
Subject: RE: Employee Al Berg
To: "Lisa Dowd" <ls_dwd@yahoo.com>
Date: Friday, July 27, 2012, 1:52 PM

e-mails

correspondence
between myself &
secretary to city mgr. -
Gerri Bauer, code enforcer
Lashay Ferguson &
to David Harden -
city manager
(now retired)

Ms. Dowd,

I spoke with Mrs. Butler. She has advised me that she has been working on gathering all the information concerning your complaint. Mrs. Butler will be responding to you on Monday.

Gerri Bauer

Executive Secretary to the City Manager
City of Delray Beach
100 NW 1 Avenue
Delray Beach, FL 33444
(Office)
561-243-7199 (FAX)
gbauer@mydelraybeach.com
Member of NAPW and AEAP

From: Lisa Dowd [mailto:ls_dwd@yahoo.com]
Sent: Friday, July 27, 2012 2:48 PM
To: Bauer, Gerri
Subject: RE: Employee Al Berg

Thank you , Ms. Bauer.
-Lisa Dowd

--- On Fri, 7/27/12, Bauer, Gerri <Bauer@mydelraybeach.com> wrote:

From: Bauer, Gerri <Bauer@mydelraybeach.com>
Subject: RE: Employee Al Berg
To: "Lisa Dowd" <ls_dwd@yahoo.com>
Date: Friday, July 27, 2012, 12:07 PM

Mr. Barcinski sent it down to Mrs. Butler who is Mr. Berg's supervisor. I am sorry you have not received a response yet. I will contact her to see of the status and let you know.

Gerri Bauer

Executive Secretary to the City Manager
City of Delray Beach
100 NW 1 Avenue
Delray Beach, FL 33444
(Office)
561-243-7199 (FAX)
gbauer@mydelraybeach.com
Member of NAPW and AEAP

From: Lisa Dowd [mailto:ls_dwd@yahoo.com]
Sent: Friday, July 27, 2012 12:45 PM
To: Bauer, Gerri
Subject: RE: Employee Al Berg

Ms. Bauer,

I wanted to let you know that I have not heard back from Mr.Barcinski.

Thank you,

Lisa Dowd

--- On Tue, 7/24/12, Bauer, Gerri <Bauer@mydelraybeach.com> wrote:

From: Bauer, Gerri <Bauer@mydelraybeach.com>
Subject: RE: Employee Al Berg
To: "Lisa Dowd" <ls_dwd@yahoo.com>
Date: Tuesday, July 24, 2012, 7:58 AM

Ms. Dowd,

Mr. Harden is currently on vacation. I am giving your email to the acting city manager, Robert Barcinski.

Gerri Bauer

Executive Secretary to the City Manager
City of Delray Beach
100 NW 1 Avenue
Delray Beach, FL 33444
(Office)
561-243-7199 (FAX)
bauer@mydelraybeach.com
Member of NAPW and AEAP

From: Lisa Dowd [mailto:ls_dwd@yahoo.com]
Sent: Monday, July 23, 2012 10:16 PM
To: CityManager@MyDelrayBeach.com
Cc: ls_dwd@yahoo.com
Subject: Employee Al Berg

Dear Mr. Harden

Please review the enclosed letter.

Sincerely,

Lisa Dowd
115 Highland Lane
Delray Beach, Florida
33444



RE: 115 Highland Lane

Thursday, April 12, 2012 2:17 PM

From: "Lisa Dowd" <ls_dwd@yahoo.com>

To: "LeShayFerguson" <Ferguson@mydelraybeach.com>

Thanks , I will give them a call. Have a good weekend.

-Lisa Dowd

--- On Thu, 4/12/12, Ferguson, LeShay <Ferguson@mydelraybeach.com> wrote:

From: Ferguson, LeShay <Ferguson@mydelraybeach.com>

Subject: RE: 115 Highland Lane

To: "Lisa Dowd" <ls_dwd@yahoo.com>

Date: Thursday, April 12, 2012, 2:11 PM

Ms. Dowd,

City Hall is located at 100 NW 1st Ave. The Building Departments phone number is 1-561-243-7200.

You are very welcome.

LeShay Ferguson

From: Lisa Dowd [mailto:ls_dwd@yahoo.com]

Sent: Thursday, April 12, 2012 3:08 PM

To: Ferguson, LeShay

Subject: RE: 115 Highland Lane

Dear LeShay,

Can you tell me where the building dept. is located (address) and a phone number if you have it ? Yes, I will get the proper permits for the driveway etc.

Thanks,

Lisa Dowd

--- On Thu, 4/12/12, Ferguson, LeShay <Ferguson@mydelraybeach.com> wrote:

From: Ferguson, LeShay <Ferguson@mydelraybeach.com>

Subject: RE: 115 Highland Lane

To: "Lisa Dowd" <ls_dwd@yahoo.com>

Date: Thursday, April 12, 2012, 7:50 AM

Good Morning Ms. Dowd,

Thanks for your quick response. The notice was for 2 days.

Regarding a survey, you can come into the Building Department and request microfilm for your property. If they do not have it you will have to call a surveyor.

A permit is required for all modifications planned for your property. Please inquire about permit applications as well.

Enjoy the Delray Affair!

Thank you

From: Lisa Dowd [mailto:ls_dwd@yahoo.com]

Sent: Wednesday, April 11, 2012 4:36 PM

To: Ferguson, LeShay

Cc: ls_dwd@yahoo.com

Subject: 115 Highland Lane

Ms. Ferguson,

I tried contacting you today and left a message with the receptionist. There was no answer at your number and no voice mail.

I am contacting you regarding the notice which was left on my door on 4-9-12.

First, does the notice say 21 days or 2 days?

The boat will be removed tonight and the address will be posted over the weekend. I was planning to attend the Delray Art fair this weekend to purchase tile numbers .

I had an estimate on putting in the new driveway last week. They are asking for a survey with elevations . I sent the city an e-mail asking where I can obtain one and have not heard back from them. Once I get the survey , they will be able to start .

When the driveway is finished , we will put in the sod.

I also have an appointment next week for an estimate on a new fence.

As we spoke about before , I just need some time to complete all of this.

Please respond.

Sincerely,

Lisa Dowd

561-306-3093



Employee Al Berg

Monday, July 23, 2012 9:15 PM

From: "Lisa Dowd" <ls_dwd@yahoo.com>

To: CityManager@MyDelrayBeach.com

Cc: ls_dwd@yahoo.com

1 File (27KB)



David Ha...

Dear Mr. Harden

Please review the enclosed letter.

Sincerely,

Lisa Dowd
115 Highland Lane
Delray Beach, Florida
33444

561-306-3093

Dear Mr. Harden,

7-23-12

I am contacting you in regards to a city employee, Alan Berg.

We were contacted by code enforcement months ago regarding work that needed to be done on our property. I have been in continued contact with code enforcer LaShay Ferguson. Ms. Ferguson and I have had a good repore.

The property was in foreclosure and the foreclosure was recently dismissed. Like many people in this recession , money has been tight. Our plans were to put in a new front and back yard and a new driveway. While we were in the process of this, we received a notice from code enforcement. We have since found out that our neighbor at 109 Highland Lane is the person who is calling in the complaints.

So far, we have put on a new roof, had the house painted and put in a new driveway. Thus far, we have spent in excess of \$14,000.00

We had the yard ripped out and just had a new driveway installed. The contractor still has some things to repair before the job is complete. We are in the process of working this out with the contractor.

As you know, projects like this take time and money. The process of putting in the driveway has cost us more money and time than we had anticipated . It took weeks to get the survey with elevations and the permit approved.

After the driveway is completed, we are planning to put in the sod. We cannot put in the sod until the driveway is completed, as the machines will tear up the new sod.

That brings me to today 7-23-12. My fiancé was bringing in the recycling bins this morning and was approached by the above mentioned neighbor, Niki Korval. Ms. Korval proceeded to ask him question after question regarding the work we are doing on the property . She was relentless and wanted to know time frames and work plans. Ms. Korval also said she was angry that we had contacted the city regarding a palm tree in her yard which has knocked out the power numerous times on the entire block . The last time her tree knocked out the power, FPL told us to contact the city ; which we did. She told my fiance that she was going in to call the city, he told her "that was fine ,as we are working with the city and in contact with them."

Later that day, after Ms. Korval contacted the city; code enforcer , LaShay Ferguson knocked at the door. She had a form in her hand and wanted me to sign it. She told me that there was a hearing set for August 14, 2012 . I replied, " this is because of the neighbors phone call isn't it ?" LaShay responded that her boss, Al Berg sent her out to the property. I told her that I had not been notified of any hearing. She said it had been set today. I said " it was set today because of

a neighbors phone call?" Ms. Ferguson seemed uncomfortable that her boss had sent her out , as Ms. Ferguson and I have been in continued contact regarding the work being done at the property.

I then received a call from Rick Grant and explained the entire situation to him . He was sympathetic and said he will speak to his boss (Al Berg) and call me back. I have not heard from him yet.

The reason for my complaint is we have been actively working on the property , per the cities requests. We are right in the middle of the job and the same neighbor complains in the middle of the job and then Mr. Berg sets a hearing date and sends Ms. Ferguson out to the property because of a pushy neighbor?

Mr. Berg never contacted us regarding the situation . He could have called us and asked about the work schedule and our plans before caving into a neighbor who bullied him.

Anyone can see by looking at the property that we are in the process of putting in a new yard and driveway. It is absolutely outrageous that Al Berg would do this to us.

I feel we are being harassed by both the neighbor and the city- the city , because a neighbor is pushing.

I am asking you to please address this situation and Mr. Berg. We are doing everything that has been asked of us and this is causing us enormous stress.

Sincerely,

Lisa A. Dowd

561-306-3093

**Code Enforcement**

Tuesday, March 6, 2012 4:01 PM

From: "Lisa Dowd" <ls_dwd@yahoo.com>
To: ferguson@mydelraybeach.com
Cc: ls_dwd@yahoo.com

Dear Ms. Ferguson,

I called you twice today, but you weren't at your desk. Thought it would be easier to send you an e-mail.

I have just returned from being out of town and had received a notice from the city. The case number is NA-12-00024947. My name is Lisa Dowd and my address is 115 Highland Lane Delray Beach , Fla.

I wanted to let you know what my situation is. I have been in foreclosure and the foreclosure was recently dismissed. The situation has not yet been worked out. However, we have been maintaining the property and have made several improvements. We have put on a new roof, recently had the house painted (exterior) had the yard cleared out from bad grass and weeds , put in a new back door and new ceilings etc.

We are continuing to make the necessary improvements. Our plan was to first rip out the fence , bushes and put in a new yard and fence in the backyard . After that our plan is to put in a circular driveway , new landscaping and new grass / groundcoverings in the front and side yard. The reason we have planned it this way is because the contractor will ruin any new sod etc. when he comes in through the front yard to rip out the bushes and fence in the back.

I am asking for an extension of time in being able to complete this.

Sincerely,

Lisa Dowd

ls_dwd@yahoo.com

561-306-3093



115 Highland Lane

Wednesday, April 11, 2012 3:35 PM

From: "Lisa Dowd" <ls_dwd@yahoo.com>

To: ferguson@mydelraybeach.com

Cc: ls_dwd@yahoo.com

Ms. Ferguson,

I tried contacting you today and left a message with the receptionist. There was no answer at your number and no voice mail.

I am contacting you regarding the notice which was left on my door on 4-9-12.

First, does the notice say 21 days or 2 days?

The boat will be removed tonight and the address will be posted over the weekend. I was planning to attend the Delray Art fair this weekend to purchase tile numbers .

I had an estimate on putting in the new driveway last week. They are asking for a survey with elevations . I sent the city an e-mail asking where I can obtain one and have not heard back from them. Once I get the survey , they will be able to start .

When the driveway is finished , we will put in the sod.

I also have an appointment next week for an estimate on a new fence.

As we spoke about before , I just need some time to complete all of this.

Please respond.

Sincerely,

Lisa Dowd

561-306-3093

Dear Mr. Shutt and Ms. Pyburn ,

7-26-12

I am contacting you regarding a complaint I have about a city employee, Al Berg.

To give you some background on the situation, I am a victim of the sub- prime mortgage crisis and my property has been in foreclosure. With the help of my attorney , my foreclosure was dismissed. In the meantime, my fiancé and I have been fixing up the property. We put on a new roof, had the house painted and most recently put in a new driveway. While going through all of this , we received a notice from the City of Delray, code enforcement. We have since found out that our neighbor Nikki Korval at 109 Highland Lane is the person calling in the complaints.

After receiving the notice , I have been in continued contact with LaShay Ferguson (code enforcement) . She gave us an extension of time in completing the work as she is aware of the situation and the work we are doing on the property. Ms. Ferguson is aware that we just put in the new driveway and that the next step is putting in the sod. The driveway is not yet complete and has not passed inspection. We are attempting to work this out with the contractor who has cut a lot of corners and needs to fix many areas (per city inspector and homeowner). Because of this, the sod cannot be put in yet because the contractors machines with tear the new sod .

This brings me to July 23, 2012. That morning my fiancé was bringing in the recycling bins and was approached by the above mentioned neighbor (Nikki Korval). Ms. Korval proceeded to question him relentlessly regarding the work we are doing on the property. She wanted a timeframe and details about the work we are doing. She was also angry about an inspector who came out to her house.(Ms. Korval has a palm tree in her backyard which is hitting the wires and has put out the power on the entire block numerous times. The last time it happened FPL told us to contact the city about the tree.) During this conversation, Ms. Korval said " I am the nice neighbor , because my house is worth \$750,000.00 and I am bringing up everyone property values." She bragged about being in "real estate". Ms. Korval then told my fiancé that " she was not going to be nice anymore and that she was going inside to "call the city on us."

Later the same day, LaShay Ferguson was knocking at our door. She had a form in her hand and wanted me to sign it. She said it was about a hearing. I said, "this is about the neighbor , isn't it?" Ms. Ferguson replied that her boss , Al Berg had sent her out. When I wouldn't sign it , she asked me if I had any tape? Ms. Ferguson then walked back to her car and got on the phone. She came back to the door, but didn't knock. I opened the door and she was taping something to my window. I then took off the notice . I told Ms. Ferguson that I did not understand , as her and I had been working together to have been in continued contact. She replied, "it was her boss, Al Berg." I said , we just put in the driveway and are going to put in the sod as soon as the driveway is completed. I told her " this is the first time I am hearing about any type of hearing." I then asked Ms. Ferguson to leave the property.

I then received a call from a Rick Grant –code enforcement. I explained the situation to him and he seemed sympathetic. He said he would talk to his boss, Al Berg and call me back . Today is July 26 and I still have not heard back from him.

The reason for my complaint is that we are in the middle of completing the work on the property and have been in close contact with the city. We have also obtained the proper permits from the city and are working with the city inspector. We have spent in excess of \$ 14,000.00 on fixing up the property thus far. Money is tight and we are doing the best we can.

I want to make sure that you are aware that there is more to this situation. Ms. Korval is angry about her tree and used the city as a weapon to harass us . It seems that Mr. Berg has been strong armed by this woman who has her own agenda.

Al Berg and Ms. Ferguson never contacted us regarding the extension they gave us. They did not even bother to come out to see the progress on the property or contact us to ask us about the work we are in the middle of finishing or ask us when it would be completed. Mr. Berg simply caved in to a pushy neighbor without any regard for us. If Ms. Korval had not made good on her threats to call the city that morning, we never would have had Ms. Ferguson knocking at the door that day nor would Mr. Berg have set a hearing date.

Another concern I have is that Ms. Korval was bragging about being in real estate and that her property is worth \$750,000.00 (the other homes on the block are worth between \$ 200,000.00- \$300,000.00). I want to make sure that Al Berg is not a personal friend or relative of hers.

Yesterday , I received two letters from the city regarding a hearing set for 8-14- 12. I also will be out of town that week.

I contacted the Palm Beach Commission of Ethics and they told me to contact you. I am asking that the City Attorney's Office look into this situation. It seems that Mr. Berg is showing favoritism and not remaining neutral. Ms. Korval has used the city as a means to harrass us and Mr. Berg is now a part of her harassment of us.

I feel we are being treated unfairly by Mr. Berg and his employees. I am asking that the City Attorney strike this hearing date and discipline Mr. Berg for his lack of professionalism, as we are in the middle of completing the work on the property.

Sincerely,

Lisa A. Dowd

115 Highland Lane

Delray Beach, Florida 33444

561-306-3093

My letter
to Delray
City attorneys
—
I did not
receive a
response

ls_dwd@yahoo.com

LOT 37

BONNIECREST SUBDIVISION

According To The Plat Recorded In Plat Book 24, Page 69 ,Recorded In The
Record Of Palm Beach County, Florida Said Land Situate, Lying, Public And Being In
Palm Beach County, Florida .

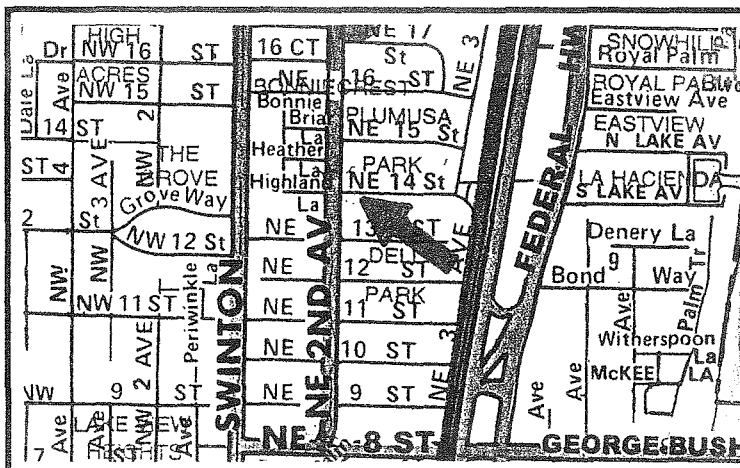
ADDITIONS OR DELETIONS TO THIS MAP IS
PROHIBITED WITHOUT WRITTEN CONSENT OF THIS
OFFICE.

BEARINGS SHOWN HEREON ARE RELATIVE TO PLAT
AND ARE ASSUMED.

NO ABSTRACT OR TITLE SEARCH WAS PERFORMED
BY THIS OFFICE TO DISCOVER THE EXISTENCE IF ANY
EASEMENTS OR RESTRICTIONS OF RECORD.

ELEVATIONS SHOWN HEREON ARE BASED ON
NATIONAL GEODETIC VERTICAL DATUM OF 1929
UNLESS OTHERWISE NOTED.

NO BELOW GROUND IMPROVEMENTS, FOOTERS,
FOUNDATIONS OR UTILITIES HAVE BEEN LOCATED
OR SHOWN ON THIS SURVEY.



O.R.B. = official record book	Tran. = transformer pad	P.B. = plat book	P = plat	PG. = page
C.B.S. = concrete block structure	F.P. & L = Florida Power & Light	Typ = typical	Ø = power pole	I.R. = iron rod
P.C.C. = point of compound curve	CM = concrete monument	R/W = right-of-way	M = measured	R = radius
P.C.P. = permanent control point	P.R.C. = point of reverse curve	△ = central angle	I.P. = iron pipe	D = deed
P.O.C. = point of commencement	P.I. = point of intersection	⊙ = bearing basis line	RP = radius point	O/S = offset
P.O.B. = point of beginning	P.T. = point of tangency	Asph = asphalt	L = arc length	Conc = concrete
D/E = drainage easement	* = not field measured	M.H. = manhole	CL = centerline	Esmt = easement
C.M.P. = corrugated metal pipe	WPF = wood privacy fence	U/E = utility easement	ALUM. = aluminum	Calc = calculated
R.L.S. = registered land surveyor	Chatt = chattahoochee	CLF = chain link fence	P.C. = point of curvature	L.B. = licensed business
P.S.M. = professional surveyor & mapper		ELEV = elevation	P.R.M. = permanent reference monument	



Renner, Burgess, Inc.

1 S.E. 4th Ave., Suite 212
Delray Beach, FL 33483

Phone 561-243-4624
Fax 243-4869
West Palm 735-7639
West Palm Fax 735-7641

Certified To:

DOWD RESIDENCE

Authorization Number LB6504

I hereby certify that the Sketch of Boundary Survey shown hereon
meets the minimum technical standards set forth in Chapter 61G17-6,
Florida Administrative Code pursuant to Section 472.027, Florida
Statutes.

Harry A. Burgess

R.L.S. No. 5089

Flood Zone:

Map No: 125102 0002 D

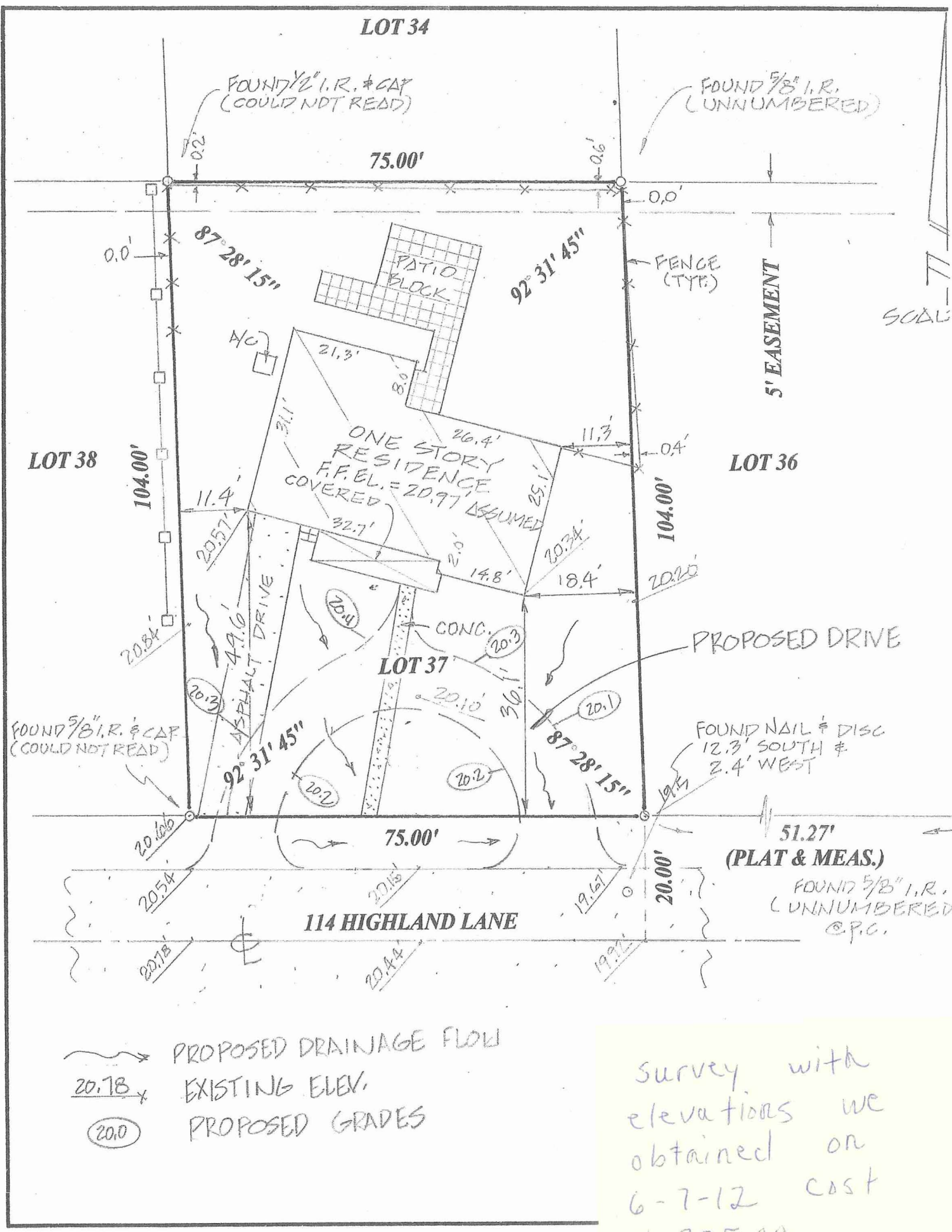
Map Date: 1-5-89

Date: 6-7-12

Job No: 6-12-010

Revised:

Not valid unless
sealed with embossed
surveyor's seal

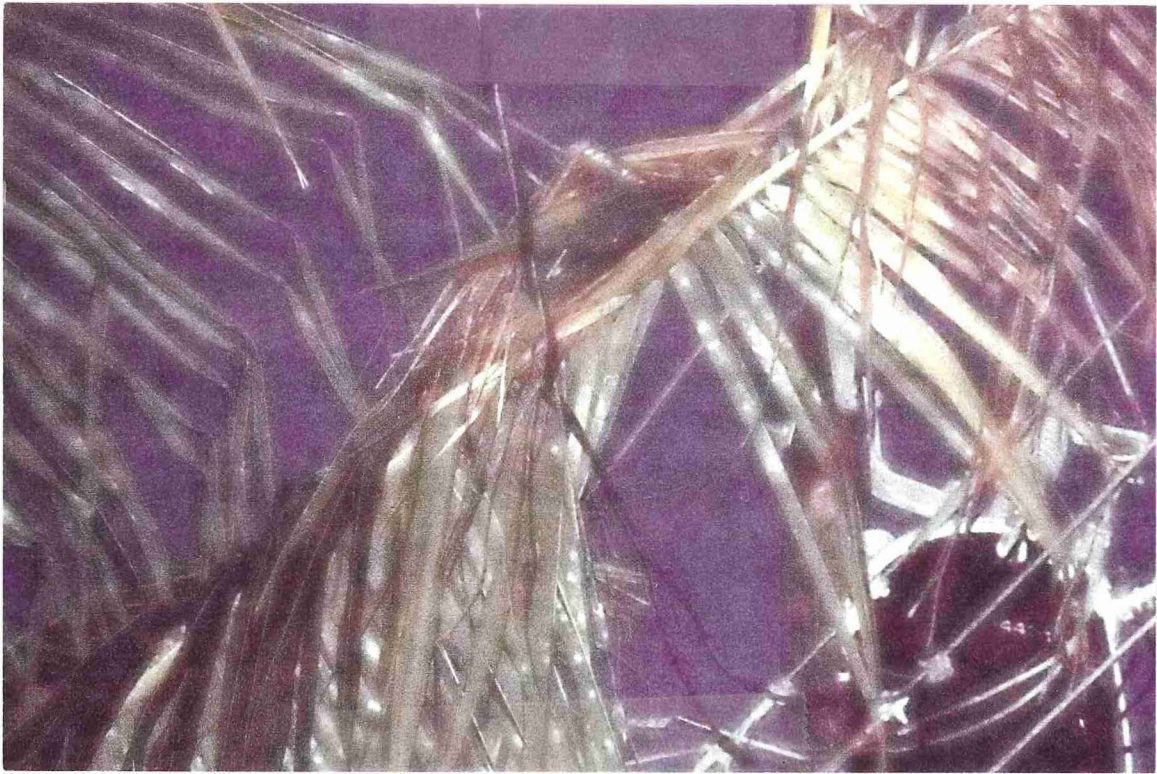


Survey with elevations we obtained on 6-7-12 cost \$ 325.00



Nikki Korval's
tree hitting the
power lines

picture taken
Summer, 2012



Nikki Korval's
tree hitting the
power lines

picture
taken summer
2012



Nikki Korvals
tree hitting the
power lines

picture taken
Summer 2012



our new driveway
installed July, 2012

115 Highland Lane
Delray Beach Fla.
33444

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF INQUIRY

To: Alan S. Johnson, Executive Director

From: Mark E. Bannon, Investigator

Re: C12-008 – Al Berg, Deputy Director Community Improvement, Lula Butler, Director Community Improvement, and Douglas Smith, Assistant City Manager, City of Delray Beach

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff through a formal sworn complaint submitted by Lisa Dowd, a citizen of Delray Beach. Complainant lists three Respondents; Al Berg, Deputy Director of Community Improvement; Lula Butler, Director of Community Improvement; and Douglas Smith, Assistant City Manager. All Respondents are employees of the City of Delray Beach (the City). The Complaint was dated August 21, and was properly notarized. Attached to the Complaint was a five page typewritten document from Complainant outlining the information that forms the basis of this Complaint. Also submitted with the sworn Complaint was a “Notice of Formal Hearing” before the City of Delray Beach Code Enforcement Board for Lisa Ann Dowd under case #12-00024947, with a hearing date of August 14, 2012 at 1:30pm, a second notice listing a new hearing date of September 11, 2012 before this board, and various letters between Complainant and David Harden, City Manager and Respondent, Douglas Smith, Assistant (Acting) City Manager. Additionally, the package included several email exchanges between Complainant and employees of the City as well as photographs identified by Complainant as a palm tree belonging to her neighbor Nikki Korval, which Complainant claims has caused several power outages in her neighborhood because of its close proximity to overhead power lines.

The Complaint is based on the alleged actions taken by various City employees, and in particular those of the Code Enforcement Division, by the issuance of a Violation Notice to Complainant by Code Enforcement Officer Lashay Ferguson. The City’s Code Enforcement Division is under the Department of Community Improvement. Respondent Butler is the Director of Community Improvement, and Respondent Berg is the Deputy Director. According to Complainant, the initial Notice of Violation was issued based on several complaints to the City by her neighbor, Nikki Korval. Complainant also makes an allegation that Korval has a close relationship with Code Enforcement employees based on her working in the commercial real estate field, and that this relationship has allowed Korval to use the City and Code Enforcement personnel to “harass us.” Complainant has written letters to the City Manager, David Harden, as well as to Respondent Smith (acting City Manager during some of this period as Harden was on vacation) about what she feels is a unfair treatment of her, and a bias of the City for her neighbor, Nikki Korval. Respondent Smith advised her in a letter dated August 6, 2012, that she has been given sufficient time to comply with the code requirements, and that the matter would be referred to the Code Enforcement Board to make a determination as to whether she is in violation.

- **Person’s interviewed during Inquiry**

1. Yolaina Ruiz, Delray Beach Code Enforcement employee
2. Danise Cleckley, Delray Beach Code Enforcement Coordinator
3. Al Berg, Respondent, Deputy Director, Delray Beach Community Involvement Department
4. Lisa Dowd, Complainant
5. Lashay Ferguson, Code Enforcement Officer, City of Delray Beach

- **Inquiry**

In the initial Inquiry into this Complaint, I reviewed the information provided by Complainant. Complainant advised in her letter documenting the Complaint that she initially received a Notice of Violation from Lashay Ferguson in the spring of 2012. This code violation notice given to her for the lack of "ground cover" on the front and back yard of her home within the City of Delray Beach. Code Enforcement records show that this initial Notice of Violation was given on February 15, 2012. After contacting Code Enforcement Officer Ferguson and explaining that there was work being done to the home, Complainant writes, "She immediately understood that this was not just about sod, but that we had put on a new roof, just had the house painted, just ripped out the yard so that we could put in a new yard and driveway." Complainant stated that Ferguson seemed to be working with her and monitoring the progress of the work on her home. City records show that over the next several months Complainant was given at least three (3) separate extensions to complete the work on her home and replace the ground cover (10 days, 30 days and 30 days). During this time, her neighbor, Korval, complained several times to City employees about the length of time that the yard remained without grass, that the home looked unsightly for over six (6) months, and that sand was blowing into neighbors' yards. When the fourth extension, this time for sixty (60) days, was given to Dowd by Ferguson on July 6, 2012, Respondent Berg, determined that this fourth extension should not have been given without consulting him first. Ferguson was sent back to Complainant's property this same day to issue a Notice of Violation. During her second visit that day to the Complainant's property, Ferguson reports that she attempted to issue the violation notice, but Complainant refused to sign the violation, refused to allow it to be posted on the property, and ordered her off of the property. The violation notice was nonetheless recorded in City records, and a notice was sent to Complainant listing a hearing date of August 14, 2012 at 1:30 PM. This date was later changed to September 11, 2012. Complainant was not at the hearing (she advised in her letter that she was out of town and that she had notified Code Enforcement that she was unavailable on that date). The Code Enforcement Board found her guilty of the violation on September 11th, and issued a fine of \$50 per day until the ground cover situation was corrected. However, they also suspended that order for thirty (30) days to allow her additional time to correct the violation.

During July and August, 2012, Complainant exchanged emails and letters with City employees, including Respondent Smith. Complaint states that during email exchanges with Gerri Bauer, Assistant to the City Manager, she was told by Bauer that David Harden had retired as City Manager and that the issue would be presented to an assistant city manager to resolve. In reviewing the emails Complainant provided, she was actually told that Harden was on "vacation," by Bauer, and the matter would be referred to an assistant city manager. The issue was eventually reviewed by Respondent Douglas Smith, who agreed with Respondent Berg's determination that the three (3) extensions already given to Complainant were sufficient, and that the case would be set before the code enforcement board for resolution. Respondent Smith sent a letter to Complainant dated August 6, 2012 advising of this determination.

Complainant's issues with the three (3) employees named in her Complaint stem from a failure to resolve the violation issue to Dowd's satisfaction. Dowd alleges that this failure is based on some improper relationship between the City employees and her neighbor, Nikki Korval. Complainant presents no evidence of such a relationship other than her statement that Korval is a commercial realtor and would be familiar with code enforcement personnel, and an allegation that Korval has a current violation concerning a palm tree interfering with overhead electric lines in Korval's yard that the City has not addressed it as a violation. The palm tree issue was later discussed with both Respondent Berg and FPL Customer Service, who both agree issues of trees interfering with power lines are homeowner/FPL issues, and not issues that the City would address in a code enforcement context, as typically they do not involve a City Code violation.

Specifically, Complainant's allegations of a Code of Ethics violation for each person named in her Complaint appear to be based on the following issues:

- Complainant alleges that Respondent Smith failed to properly investigate the violation issue before agreeing with Respondent Berg that the violation should be sent to the Code Enforcement Board for a hearing.
- Complainant alleges that Respondent Butler, failed to contact her after Complainant had been told by Bauer that she would do so.
- Complainant alleges that Respondent Berg, improperly disallowed a sixty (60) day extension given to Complainant by Officer Ferguson on July 6, 2012, and ordered her to issue a Notice of Violation instead, without first contacting Complainant, or doing a proper investigation of the circumstances surrounding the alleged violation. She also alleges that this was done because of some improper relationship between Berg and/or other City employees and her neighbor, Nikki Korval.
- Complainant alleges that the initial hearing date of August 14, 2012 was changed to September 11, 2012, because Nikki Korval had requested the change, which she lists as another example of Korval's improper relationship with City employees.

After evaluating all documents provided by Complainant and a limited number of records available from the City website (www.myclaybeach.com), I made initial contact by telephone with Yolaina Ruiz, with Delray Beach Code Enforcement. She was later joined by Danise Cleckley, Code Enforcement Coordinator with the City. Prior to Cleckley joining our telephone discussion, Ruiz told me that while she was not personally familiar with this case, she did review the Case History Report on the Complainant's address, 115 Highland Lane, Delray Beach. This report found in the Code Enforcement database showed that on February 15, 2012, Code Enforcement Officer Ferguson inspected Complainant's property in reference to a complaint that the front and rear yard had improper ground cover (grass or other plants to hold the soil in place). This allegation was verified by Ferguson, who issued a Notice of Violation to Complainant. The report also noted that Complainant called Ferguson this same day to request a thirty (30) day extension to correct the issue. According to the case report entry, she was granted an initial extension of ten (10) days.

We were joined on the telephone by Cleckley, who as the Code Enforcement Coordinator was more familiar with the case. Cleckley stated that the complaint with Code Enforcement stemmed from the fact that in January, 2012, Dowd removed all vegetation from the front and rear yard of her home, including all grass or "ground cover," which is a City Code violation. Code Enforcement Officer Ferguson was sent out to the home to conduct an inspection of this problem on February 15, 2012. Cleckley reiterated that Ferguson's case report states that the property owner (Dowd) later called to request a 30 day extension to address the issue, and was given a ten (10) day extension at that time. The report goes on to advise that on March 8, 2012, Ferguson again spoke to Dowd about the lack of ground cover. Dowd told Ferguson that she had just installed a new roof, a new ceiling, and planned to install a new fence and sod, but it would take additional time. Dowd was given an additional thirty (30) day extension by Ferguson. Ruiz later advised me that City building permit records indicate Dowd received a permit to re-do her roof at that address on November 15, 2010, and that a Certificate of Occupancy for the roof (showing that the work had been completed) was issued by the City on December 10, 2010, over a year before she advised Ferguson about needing more time to correct the ground cover issue because she had her roof replaced. The records also show that Complainant has not applied for a permit to have a fence installed at her home as of September 25, 2012.

On June 4, 2012, after another inspection of the property, Ferguson reports she gave an additional extension to Dowd until July 6, 2012 because the project was not yet complete. On July 6, 2012, Ferguson again inspected the property and this time gave Complainant an additional extension of sixty (60) days. However, she was overruled by her supervisor, Respondent Berg, who determined that no more extensions would be issued by the Department in this case. He sent Ferguson back to the property to issue a Notice of Violation. According to the report, Dowd refused to sign the violation notice, and refused to allow Ferguson to post it on her property, instead ordering her to leave her property. On July 23, 2012, the violation was set for a Formal Hearing before the City Code

Enforcement Board on August 14, 2012 at 1:30 PM, and City records indicate that Complainant was notified of this date. The case was later reset to September 11, 2012, but Cleckley was unsure from the report the reason for that change. However City records show that Complainant was again notified of the new hearing date. I asked Cleckley to have Respondent Berg call me when he returned to his office.

I spoke to Respondent Berg via telephone later this same day. Berg advised me that they try very hard to give people enough time to complete projects, but that they also have an obligation to other residents that these projects be done in a reasonable time. Berg said the problem with the removal of the ground cover at Dowd's property was complicated by "sugar sand" covering the lawn area, which tends to be easily blown onto neighboring property. He did admit that Nikki Korval had been complaining for some time about how long the work was taking, but he allowed Ferguson to grant three (3) separate time extensions to Dowd in an effort to give her time to correct this violation. However, when Ferguson gave Dowd the last extension of sixty (60) days he overruled that decision. According to Berg, he did so because the ground cover issue had been around for over seven (7) months by that point, and he felt that it should be up to the Code Enforcement Board to decide if any further time extensions were warranted. He then had Ferguson issue a Violation Notice to bring this issue before the Board.

When I asked him why the original hearing date of August 14, 2012 was moved to September 11, 2012, he stated that due to Dowd's letter with the City Manager's office, it was decided to again allow her some additional time, so the hearing was re-set to September 11, 2012, and she was notified of the change. He was later made aware of her request to change the date again as she would be out of town, but states it was not changed because he felt that more than enough time had passed, and he suspected that the Board would provide her some additional time. At the September 11, 2012 hearing, which was not attended by Dowd, the Code Enforcement Board found her guilty of a violation, but allowed an additional 30 days for her to correct the violation by planting sod (or other acceptable ground cover) in her yard. However, they issued a fine of \$50 per day for every day after this extension. Berg also stated that at the end of the thirty (30) day extension given by the Board, Dowd can appear before the Board again and ask for additional time. In speaking to Berg about the palm tree issue concerning FPL power lines, he advised that the Delray Beach City Code does not address trees and power lines, and all such issues reported to the City are referred to FPL to deal with through their tree cutting contractors. Berg also advised that he had no personal or outside business relationship with Nikki Korval that would cause him to give her complaint preference, and he did not. He also could not ignore her complaint, since each time the site was inspected, the violation remained uncorrected. He felt that sufficient time had passed to bring the issue before the Code Enforcement Board, rather than simply granting Dowd another extension.

I next contacted the Customer Service Department of Florida Power and Light Company (FPL), to address the ancillary issue in the Complaint that the City was responsible to address trees growing near power lines that posed a potential threat to the lines, and that Korval had not been cited for a code violation as she should have been. Complainant had alleged that Korval's palm tree had knocked the power out in her neighborhood before, and that FPL advised Dowd that it was the City's responsibility to make sure that trees were kept away from these lines. I spoke to FPL Customer Service Representative "Marisela" (she declined to give her last name based on FPL policy, but provided her agent number as GXCOM0). Marisela verified that there was a power outage reported from 115 Highland Lane, Delray Beach on August 20, 2012, and according to notes from that call, the cause of the outage was a palm tree on a neighboring property. When I asked her if they would refer such an incident to the City for any action, Marisela stated that it was FPL and the property owner's responsibility to make sure trees did not reach the power lines. Marisela advised that when FPL receives a call that a tree is close to power lines, their response is to refer the complaint to their internal Tree and Vegetation Department, who then send an inspector out to evaluate the situation, and if necessary, assigns a contractor to correct the problem. FPL's website (www.fpl.com) also addresses this issue, advising that a property owner should only trim trees that are well below any power lines, and that FPL will address any trees that are above or within close proximity to power lines with professional contractors, due to the inherent danger posed by the power lines.

On September 25, 2012, I called the Complainant Lisa Dowd and left a message asking her to contact me. My purpose was to ask her if she had any additional information regarding her Complaint, and to attempt to further

discuss her specific complaints against the three individuals named in the Complaint. She returned my call on the afternoon of September 26, 2012. Complainant had no additional information other than that which she listed in her sworn Complaint. She did state that she was in town on September 11, 2012, but did not attend the Zoning Board hearing because she was not aware it was being held. When I advised her that among the documents submitted to COE staff by her were hearing notices for both August 14th and September 11th, she told me that Rick Grant of Code Enforcement told her the hearing was cancelled, so she did not attend. While Complainant continued to insist that the decision to cite her was based on some improper relationship between City employees and her neighbor, Nikki Korval, she offer no facts supporting the allegation based on her personal knowledge, and stated that it was my job to find out if such a relationship existed.

Shortly after my discussion with Complainant, COE Staff Counsel Megan Rogers advised me that she had a discussion on the telephone with Dowd approximately a month prior to her filing this Complaint. Rogers advised that she told Complainant during their discussion that her remedy would have to come from the Code Enforcement Board as there was no indication of a violation of the Code of Ethics based on her alleged facts and circumstances, and that the COE did not have authority to order the City to withdraw a code violation notice.

On the morning of September 26, 2012, I left a message with the Code Enforcement office asking that Officer Lashay Ferguson call me so that I could speak with her about this issue. When I was able to speak with Ferguson the afternoon of September 27, 2012, Ferguson gave basically the same fact pattern as is in her case report. She stated that while Respondent Berg did disallow the fourth extension of time to Complainant, she believes he did so to allow the Code Enforcement Board to weigh in on the matter, and because the situation had been ongoing for such an extended period of time. Ferguson said that the Code Enforcement employees do try to give residents and business owners time to complete projects, but that they cannot ignore violations, especially when reported by others, and when they are long standing violations.

Ferguson is not aware of any personal or other relationship between Nikki Korval and any Code Enforcement or City staff that would lead to Korval getting special treatment in this case, and that the timeline of events indicates that allegation is not factually accurate. She has spoken on several occasions with Korval about the Complainant's yard, but states at no time did Korval ever attempt to bully her, or tell her that she was a friend of any City official or employee in an effort to have her deal with the ground cover issue more aggressively. Ferguson does agree however, that when residents complain about a clear code violation, the Code Enforcement Department must take some action to cure the violation eventually, even where the home or business owner may feel they were given insufficient time.

The following documents are submitted to the file concerning this inquiry:

- **Documents submitted to file**

1. Initial Complaint and letter from Complainant detailing the issues. (7 pages)
2. Copy of the Notice of Formal Hearing before the Delray Beach Code Enforcement Board set for August 14, 2012. (3 pages)
3. Copy of the Notice of Formal Hearing before the Delray Beach Code Enforcement Board set for September 11, 2012. (3 pages)
4. Copy of letter from Complainant to Delray Beach City Manager David Harden dated 7-23-12. (2 pages)
5. Copy of letter from Delray Beach Acting City Manager Douglas Smith to Complainant dated August 6, 2012. (1 page)
6. Copy of letter from Complainant to Delray Beach City Assistant City Manager Douglas Smith dated 8-18-12. (4 pages)
7. Copy of various emails sent and received by Complainant and various City employees. (7 pages)
8. Copy of letter from Complainant to Delray Beach City Attorneys dated 7-26-12. (2 pages)
9. Copy of survey for Complainant's property dated 6-7-12 (2 pages)

10. Three (3) photographs from Complainant showing a palm tree and power lines, dated Summer, 2012, and stating they are photos of Nikki Korval's palm tree (3 pages)
11. One (1) photo of a driveway, stating that it is of the Complaint's new driveway, installed July, 2012. (1 page)
12. Copy of Delray Beach Code Enforcement Case History report for case #12-00024947, listing actions taken by Code Enforcement Officer Ferguson concerning code violation on Complainant's property. (3 pages)
13. Copy of information concerning the Delray Beach Code enforcement Board, taken from the City website (www.mydelraybeach.com), and listing Board membership. (2 pages)
14. Copy of information concerning the Delray Beach City Manager's Office, taken from the City website (www.mydelraybeach.com). (1 page)
15. Copy of information concerning the Delray Beach Community-Oriented Code Enforcement Division, taken from the City website (www.mydelraybeach.com). (1 page)
16. Copy of the Landscape Code Requirements for the City of Delray Beach, taken from the City website (www.mydelraybeach.com). (3 pages)
17. Copy of Delray Beach Code Section 100.07 – Yards and Landscape areas, taken from "municode" website (www.library.municode.com), listing specific code section Complainant is alleged to have violated. (1 page)
18. Copy of information from FPL website (www.fpl.com), listing information about trees and power lines. (2 pages)

- **Legal Analysis**

The following portions of the PBC Commission on Ethics ordinance are relevant to this Inquiry:

Section 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

Section 2-442. Definitions.

Official or employee means any *official or employee of the county or the municipalities located within the county*, whether paid or unpaid. (Emphasis added)

As the employees of the City of Delray Beach, Al Berg, Lula Butler and Douglas Smith are subject to the provisions of the PBC Code of Ethics, as of June 1, 2011, when Delray Beach came under the jurisdiction of the PBC Commission on Ethics.

The following section of the Palm Beach County Code of Ethics is relevant to this inquiry.

Section 2-443(a), *Misuse of public office or employment*, states in relevant portion:

An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care *will result in a special financial benefit*, not shared with similarly situated members of the general public, for any of the following persons or entities: Himself or herself; spouse, domestic partner or household member or dependant; any close family relative; outside employer or business; customer or client of such outside employer or business; any substantial creditor of debtor of his or hers, or of their spouse or domestic partner; or any civic group, union, or charitable or religious organization, of which he or she or their spouse or domestic partner is an officer or director. (Emphasis added)

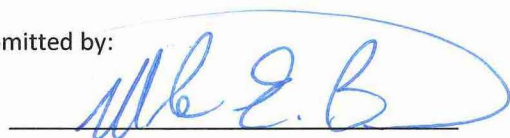
There is no allegation by Complainant, or information uncovered during this inquiry, to indicate that Al Berg, Lula Butler or Douglas Smith acted in their official positions to personally receive any improper financial benefit, or that any person or entity listed within this section received any improper financial benefit in violation of this section.

Section 2-443(b) *Corrupt misuse of official position*, states:

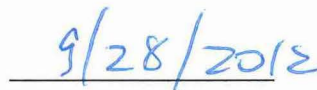
An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.* (Emphasis added)

There is no evidence provided by Complainant, or uncovered during this inquiry, to indicate that Al Berg, Lula Butler or Douglas Smith violated any section of the PBC Code of Ethics. A review of the information available shows that the City and Code Enforcement employees went to great lengths to allow Complainant time to correct the code violation prior to setting this matter for a Code Enforcement hearing. According to the records maintained by Code Enforcement, Complainant was given three (3) separate extensions of time prior to setting this matter for a hearing before the City Code Enforcement Board, even though Complainant's neighbor Nikki Korval continued to complain to City staff that the work was taking far too long to complete. There is no evidence uncovered during this Inquiry of any improper benefit given to Nikki Korval based on an improper relationship with any City employee.

Submitted by:

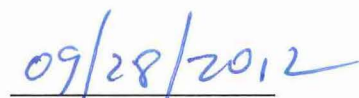


Mark E. Bannon, Investigator
PB County Commission on Ethics



Date

Reviewed by:


(Initials)

Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF NO LEGAL SUFFICIENCY AND RECOMMENDATION OF DISMISSAL

To: Palm Beach County Commission on Ethics

From: Alan S. Johnson, Executive Director

Re: C12-008 – Al Berg, Deputy Director Community Improvement, Lula Butler, Director Community Improvement, and Douglas Smith, Assistant City Manager, City of Delray Beach

- **Recommendation**

Regarding the Complaint against Respondents, Al Berg, Deputy Director Community Improvement; Lula Butler, Director Community Improvement; and Douglas Smith, Assistant City Manager, City of Delray Beach, the Executive Director has found **NO LEGAL SUFFICIENCY** in complaint number C12-008 and recommends **DISMISSAL** pursuant to Art. V, §2-260(b) and Rule of Procedure 4.2.

Legal sufficiency exists where there is an allegation containing the elements of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the Complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff through a formal sworn complaint submitted by Lisa Dowd, a Delray Beach resident. The Complaint is based on the alleged actions taken by City three (3) City of Delray Beach employees, Al Berg, Deputy Director Community Improvement; Lula Butler, Director Community Improvement; and Douglas Smith, Assistant City Manager, and is based on the issuance of a Violation Notice to Complainant by Code Enforcement Officer Lashay Ferguson. The City's Code Enforcement Division is under the Department of Community Improvement. According to Complainant, the initial Notice of Violation was issued based on several complaints to the City by her neighbor, Nikki Korval. Complainant makes an allegation that Korval has a close relationship with Code Enforcement employees based on her working in the commercial real estate field, and that this relationship has allowed Korval to use the City and Code Enforcement personnel to "harass us." Complainant has written letters to the City Manager, David Harden, as well as to Assistant City Manager Douglas Smith (acting City Manager during some of this period as Harden was on vacation) about what she feels is a unfair treatment of her, and a bias of the City for her neighbor, Nikki Korval.

The specific basis of Dowd's Complaint against the named individuals and the City is as follows:

- Complainant alleges that Assistant City Manager Douglas Smith failed to properly investigate the violation issue before agreeing with Community Improvement Deputy Director Al Berg that that the violation should be sent to the Code Enforcement Board for a hearing. She also states that when she spoke with Smith, he did not appear to know the exact date of the hearing before the Code Enforcement Board.
- Complainant alleges that the Director of Community Improvement, Lula Butler, failed to contact her after Complainant had been told by Bauer that she would do so.
- Complainant alleges that Community Improvement Deputy Director Al Berg, improperly disallowed a sixty (60) day extension given to Complainant by Officer Ferguson on July 6, 2012, and ordered her to issue a Notice of Violation instead, without first contacting Complainant, or doing a proper investigation of the

circumstances surrounding the alleged violation. She also alleges that this was done because of some improper relationship between Berg and/or other City employees and her neighbor, Nikki Korval.

- **Analysis**

The following portions of the PBC Commission on Ethics ordinance are relevant to this Inquiry:

Section 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

Section 2-442. Definitions.

Official or employee means any *official or employee of the county or the municipalities located within the county*, whether paid or unpaid. (Emphasis added)

As the employees of the City of Delray Beach, Al Berg, Lula Butler and Douglas Smith are subject to the provisions of the PBC Code of Ethics, as of June 1, 2011, when Delray Beach came under the jurisdiction of the PBC Commission on Ethics.

The following sections of the Palm Beach County Code of Ethics are relevant to this inquiry.

Section 2-443(a), Misuse of public office or employment, states in relevant portion:

An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care *will result in a special financial benefit*, not shared with similarly situated members of the general public, for any of the following persons or entities: Himself or herself; spouse, domestic partner or household member or dependant; any close family relative; outside employer or business; customer or client of such outside employer or business; any substantial creditor or debtor of his or hers, or of their spouse of domestic partner; or any civic group, union, or charitable or religious organization, of which he or she or their spouse or domestic partner is an officer or director. (Emphasis added)

There is no allegation by Complainant, or information uncovered during this inquiry, to indicate that Al Berg, Lula Butler or Douglas Smith acted in their official positions to personally receive any improper financial benefit, or that any person or entity listed within this section received any special financial benefit in violation of this section.

Section 2-443(b) Corrupt misuse of official position, states:

An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties*. (Emphasis added)

There are no facts or circumstances within the personal knowledge of Complainant, or otherwise found during this inquiry, to indicate that Al Berg, Lula Butler or Douglas Smith violated any section of the PBC Code of Ethics. A review of the information available shows that the City and Code Enforcement employees went to great lengths to allow Complainant time to correct the code violation prior to setting this matter for a Code Enforcement hearing. According to the records maintained by Code Enforcement, Complainant was given three (3) separate extensions of time prior to setting this matter for a hearing before the City Code Enforcement Board, even though Complainant's neighbor continued to complain to City staff that the work was taking far too long to complete.

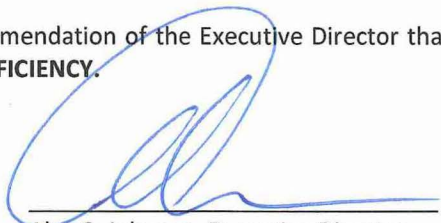
There is no evidence uncovered during this Inquiry of any improper benefit given to Nikki Korval based on an improper relationship with any City employee.

- **Conclusion**

Based on the fact that the allegations provided in the Complaint are not based on the personal knowledge of the Complainant, and further, that the COE Inquiry did not find any evidence of such a violation, there is **NO LEGAL SUFFICIENCY** to open a formal investigation into this matter.

It is the recommendation of the Executive Director that this **COMPLAINT** be **DISMISSED** based upon a finding of **NO LEGAL SUFFICIENCY**.

BY:



Alan S. Johnson, Executive Director
Florida bar #223352
Commission on Ethics

09/28/2012

Date



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

In Re: Al Berg, Lula Butler, Douglas Smith
City of Delray Beach

C12-008

PUBLIC REPORT AND FINAL ORDER OF DISMISSAL

COMPLAINANT, Lisa Dowd, filed a **COMPLAINT** on August 25, 2012 alleging a possible ethics violation involving **RESPONDENTS**, Al Berg, Lula Butler, and Douglas Smith, City of Delray Beach employees.

The **COMPLAINT** alleges **RESPONDENTS** corruptly misused their official positions by improperly processing a City code enforcement complaint against Complainant, based upon an unspecified relationship with the Complainant's neighbor.

On September 28, 2012, after reviewing the **COMPLAINT**, supporting affidavit and memorandum of inquiry, the **COMPLAINT** was determined by staff to be **LEGALLY INSUFFICIENT**, and presented to the Commission on Ethics on October 4, 2012 with a recommendation of dismissal as **LEGALLY INSUFFICIENT**.

The Commission on Ethics reviewed the **COMPLAINT** and memorandum of inquiry, along with a letter submitted by **COMPLAINANT** dated October 1, 2012, and determined that there is no personal knowledge to support the allegation by **COMPLAINANT**, or information known or uncovered by staff inquiry to indicate that **RESPONDENTS** acted in their official position in violation of the Code of Ethics.

Therefore, the Commission has determined that the allegations made by Complainant are not based upon personal knowledge and that the official actions taken by the **RESPONDENTS**, Al Berg, Lula Butler, and Douglas Smith, do not constitute a violation of the Code of Ethics and **DISMISSED** the **COMPLAINT** on October 4, 2012, due to **NO LEGAL SUFFICIENCY**.

Therefore it is:

ORDERED AND ADJUDGED THAT the **COMPLAINT** against **RESPONDENTS**, Al Berg, Lula Butler, and Douglas Smith, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 4, 2012.

By: 
Manuel Farach, Chair