

CITY OF DAYTONA BEACH MINUTES

SPECIAL MAGISTRATE HEARING

December 11, 2012 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

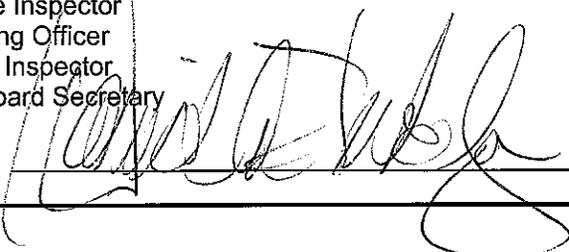
ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Hector Garcia, Code Compliance Manager
Mr. Daniel Garcia, Code Inspector
Mr. David Newell, Fire Inspector
Mr. John Stenson, Code Inspector
Ms. Colleen Miles, Zoning Officer
Mr. Denzil Sykes, Code Inspector
Ms. Aimee Hampton, Board Secretary

Approval of Minutes by:


Special Magistrate

Mr. Vukelja called the Hearing to order at 9:03 a.m.

Mr. Vukelja approved the November 13, 2012 Meeting Minutes.

Ms. Hampton swore in members of staff.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton advised the following case was in compliance:

CASE NO 2 SMG 10-12-69 – Johnny McDonald is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 4.4(i), at **515 Walker Avenue** - Violation(s) – Dead tree - First Notified – 8/10/2012.

COMPLIANCE 12/5/2012

Hearing of Cases:

CASE NO 1 SMG 10-12-68 – Primus Maddox is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3; Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.7, 304.6, and 304.13), at **417 Fletcher Avenue** - Violation(s) – Outside storage; dilapidated roof; exterior surfaces; dilapidated garage door - First Notified – 6/23/2012.

Mr. Stenson testified on behalf of the City and presented the case information, history and exhibits. Mr. Stenson stated the garage door has been removed and the majority of the outside storage has been put to the curb and it waiting to be taken away. Mr. Stenson said the roof remained in violation. Mr. Stenson stated the City was requesting a fine of \$75.00 per day with a maximum of \$10,000.

Mr. Christopher Maddox came forward and was sworn. Mr. Maddox stated his father was sick and elderly and he stated they financially could not afford to fix the roof. Mr. Maddox requested more time for compliance with the roof and to purchase a garage door.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until January 2, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 3 SMG 11-12-70 – Cathy E. Smith is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.10, 304.6, 304.13), at **510 Arthur Avenue** Violation(s) – Dilapidated stairs; exterior surfaces; windows - First Notified – 9/10/2012.

Ms. Cathy Smith came forward and was sworn.

Mr. Stenson testified on behalf of the City and stated there has been no application for permit of stairs and further stated the one hole for the crawl space access has been covered and the porch has been painted. Mr. Stenson stated the next cut-off for compliance.

Ms. Smith stated she had the building permit in hand and she had blue paint for the stairs. The only thing she needed was money to pay Mr. McCloud to be the contractor for the permit. Ms. Smith stated she had the screens for the windows inside the house that need to be put on. Ms. Smith stated she can have everything done by the next cut-off date.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until January 2, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 4 SMG 11-12-71 – Karen Ann Fisher Barrett is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3; Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13, 302.7, 307.7), at **1057 Berkshire Road** - Violation(s) – Outside storage; dilapidated/missing exterior doors (rear); dilapidated fencing; dilapidated roof (fascia) - First Notified – 5/23/2012.

Respondent was not present.

Mr. Stenson testified on behalf of the City and presented the case history, violations and exhibits. Mr. Stenson stated the property was in non-compliance and the City secured the property. Mr. Stenson stated the City was recommending imposing a fine of \$75.00 per day with a maximum of \$10,000.00.

Ruling

Mr. Vukelja imposed a fine of \$75.00 per day against the Respondent effective December 5, 2012 to continue until compliance is achieved or reached the maximum amount of \$10,000.00.

CASE NO 5 SMG 11-12-72 – Halifax Habitat For Humanity, Inc. is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1. (Ref. FBC Supp IPMC - see sections on attached Housing Inspection Form), at **735 Flanders Avenue** - Violation(s) – Unsafe Structure - See attached Housing Inspection Form - First Notified – 4/20/2012.

Respondent was in compliance December 4, 2012.

CASE NO 6 SMG 11-12-73 – Jack Morris, Jr. is cited for failure to correct violations of the Land Development Code, Art.18 Sec. 7.3; Art. 19 Sec. 1.1 (Ref. Supp IPMC 302.8, 304.7 and 304.2), at **708 Kingston Avenue** - Violation(s) – Outside storage; junk vehicle; dilapidated roof; peeling paint - First Notified – 9/19/2012.

Mr. Stenson testified on behalf of the City and stated the case history, violations and exhibits. Mr. Stenson stated there has been some improvement with the outside storage.

Mr. Jack Morris, Jr. came forward and was sworn. Mr. Morris stated he stated there has been a significant amount of work has been completed. Mr. Morris stated the two vehicles are not junk they are just broken down. Mr. Morris stated he has physical restrictions and is a single father with a 5 year old daughter. Mr. Morris stated one of the vehicles is registered but one is not registered because he did not have the money to register it but it was insured.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until January 2, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 7 SMG 11-12-74 – C.K. & Lana E. Fletcher is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 303.1, 304.14, 504.1, 604.1, 604.2, 604.3, 704.2); City Ordinance 90-297, at **146 Lee Street** - Violation(s) – **Dirty pool; screens; plumbing fixtures; no power; insufficient power; electrical system hazard; no smoke detectors; no rental license.** - First Notified – 8/22/2012.

Respondent was in compliance December 4, 2012.

CASE NO 8 SMG 11-12-76 – Renee L. Forbes & Bessies B. Forbes, JTRS is cited for failure to correct violations of the Land Development Code, Ar. 19 Sec. 1.1 (Ref. FBC Supp IPMC 301.1 & 303.2), at **141 Point O'Woods Drive** - Violation(s) – Unmaintained swimming pool; unsecure pool enclosure - First Notified – 9/25/2012.

Respondent was not present.

Mr. Stenson testified on behalf of the City and presented the case information, violations and exhibits. Mr. Stenson stated the pool is unsecured and unmaintained and dirty. Mr. Stenson stated the City was requesting a fine of \$100.00 per day with a maximum of \$15,000.00.

Ruling

Mr. Vukelja imposed a fine of \$200.00 per day against the Respondent effective December 5, 2012 to continue until compliance is achieved or reached the maximum amount of \$15,000.00.

CASE NO 9 SMG 11-12-77 – Harbourside Sunsets Condominium Association, Inc. is cited for failure to correct violations of the Land Development Code, Ar. 19 Sec. 1.1 (Ref. FBC Supp NFPA 72, 70, 101, 26.3.4.3, 4.6.12.1, 31.3.4.5 & FAC 69-60.0031); City Code 90-297, at **900 S. Peninsula Avenue** - Violation(s) – Provide annual fire alarm inspection paperwork; Fire alarm system in trouble and have active alarms - provide key for panel and recent inspection report; Install breaker lock on the breaker for the fire alarm panel; Fire alarm sounders in units are painted and many tenants have stated they are inoperable - produce paperwork showing devices are compliant with NFPA 72; Must have a key for the fire alarm panel - must obtain a knox box for that key; Unit 303 must have an ADA compliant - need smoke detector in compliance with ADA; Repair emergency light by unit 203, 302; All smoke detectors in the two unit split plan units must have hard wired smoke detectors inside or outside each room and interconnected. In the units where both rooms are next to each other, only one hard wired detector is required outside the bedrooms. All smoke detectors in the bedrooms can be battery operated and not required to be hard wired. Units 107, 109, 11, and 307 are not hard wired. Units 102, 101, 105, 108, 111, 203, 308, 301 and 106 had detectors not working. Units 105, 106, 200, 202, 203, 210, 300, 304 and 307

had no detector. Need Light Weight Truss Sign (R); and No valid license posted on site. First Notified – 9/30/2012.

Mr. David Newell, Fire Inspector, came forward and was sworn. Mr. Newell presented the case history, violations and exhibits. Mr. Newell stated the City was requesting a Will Fine Order due to the history of the property having problems. Mr. Newell stated the same issues occurred in April 2009, and corrected in July 2009, January 2010 and corrected in February 2010, and now the same issue for this case in 2012.

Mr. Sajay Markes came forward and was sworn. Mr. Markes stated the property was in compliance and would remain in compliance.

Ruling

Mr. Vukelja found the Respondent previously in non-compliance but currently in compliance and for any future repeat violation be returned to a subsequent meeting for consideration of a fine up to \$5,000 per occurrence.

CASE NO 14 SMG 12-12-82 – Gemy A. Hana & Hany Nassif, JTRS is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.6), at **108 Boysenberry Lane** - Violation(s) – Exterior surfaces (stucco) - First Notified – 8/31/2012.

Mr. Sharif Saad and Hany Nassif came forward and were sworn. Mr. Saad stipulated to the violations.

Mr. Stenson testified on behalf of the City and stated the property was in non-compliance and recommended the next cut-off date for compliance.

Mr. Saad stated they have been involved in warranty division with KB Homes regarding the violations based upon faulty construction. The entire siding of the house is buckling and they have been trying to get something done the past 3-4 years to get this fixed and now they have hired an attorney to handle the matter.

Mr. Vukelja stated he was familiar with these types of situations and suggested the Respondents provide a plan between the attorney's and experts regarding when they are going to do everything to do with the property.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondent come into compliance by February 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 15 SMG 12-12-83 – Thomas Kotora is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.1, 302.4, 302.5, 302.7, 303.1, 303.2, 303.3, 303.4, 303.5, 303.6, 303.7, 303.10, 303.13, 303.13.2, 303.14, 303.15, 304.1, 304.2, 304.3, 304.5, 305.1, 306.1, 501.2, 504.1, 504.2, 504.3, 505.1, 505.4, 506.1, 601.2, 602.1, 602.2, 602.3, 603.1, 604.2, 604.3, 605.1, 605.2, 605.3, 704.1, 704.2) Also see attached Housing Inspection Long Form - at **1323 Hillcrest Drive** - Violation(s) – Sanitation; weeds; rodent harborage; accessory structures; protective treatment; premises identification; exterior structural members; foundation walls; exterior walls; roofs and drainage; stairways, decks, porches, and balconies; window, skylight and door frames; openable windows; insect screens; doors; interior structural members; interior surfaces; interior doors; accumulation of rubbish and garbage; infestation; Plumbing system general; plumbing fixture clearances; plumbing system hazards; General water system; water heating facilities; general sanitary drainage system; Mechanical and electrical requirements - responsibility; Heating facilities required; heating for residential occupancy; heat supply; mechanical appliances; electrical facilities service; electrical system hazards; electrical installation; electrical receptacles; lighting fixtures; Fire protection systems - smoke detectors, installation. First Notified – 9/24/2012.

Mr. Stenson testified on behalf of the City and stated the property was in non-compliance but the Respondent was working with the City's Community Development Department.

Mr. Thomas Kotora came forward and was sworn and stipulated to the violations.

Ms. Mary Williams from Community Development came forward and was sworn. Ms. Williams stated Mr. Kotora has been working with Community Development on fixing his house. Ms. Williams stated the demolishing and rebuilding bids are going out on December 21, 2012 and it typically takes 90 days for reconstruction.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent in compliance by February 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000.00 and further

CASE NO 10 SMG 12-12-78 – Florida Pacific Leasing Co., LLC and 316 Main Street Station is cited for failure to correct violations of the Land Development Code, Art. 17 Sec.2.111 (c) 8, at **316 Main Street - Violation(s) – Violation of Master Plan Outside Activity - Failure to comply with submitted site plan by moving the stage and erecting a bar - First Notified – 10/17/2012.**

Mr. Frederick Johns, Ms. Phaedra Lee Harper and Mr. Cy Manula came forward and were sworn.

Attorney Peter Heebner appeared on behalf of the Respondents. Mr. Heebner stated his clients were not stipulating to non-compliance.

Mr. Daniel Garcia testified on behalf of the City and presented the case history and violations. Mr. Garcia stated the property was in compliance as of December 10, 2012 but the City was seeking a Will Fine Order.

Mr. Colleen Miles, City Zoning Officer came forward and explained the Master Plan process also presented City's Exhibit 1 that included the Master Plan Guidelines. Ms. Miles stated site plans needed to be submitted to ensure compliance during the event. Ms. Miles stated the inspections were conducted Wednesday, October 17th after lunch by her, Officer Siracusa, and Hector Garcia.

Mr. Hector Garcia testified and stated the construction of the state was no according to the master plan. There should have been a food vendor which was not there and the stage was moved forward to substitute where the food vendor was. Mr. Garcia stated at that time, he and Ms. Miles spoke with Mr. Johns and advised him he was not in compliance and asked him how much time he would need to correct the stage and Mr. Garcia stated Mr. Johns told him he needed four days. Mr. Garcia stated at that time he contacted Code Inspector Daniel Garcia to come and take pictures and notice Mr. Johns. Mr. Garcia further stated as they were leaving they noticed there was no beer tubs as indicated on the site plan, there was a mobile bar that was constructed and at that time they notified Mr. John's daughter, Ms. Harper.

Mr. Jackson asked Mr. Hector Garcia if the photographs that were being shown were they pictures at the time they went out for the inspection.

Mr. Garcia went through the pictures of the property and violations.

Mr. Garcia stated they came into compliance yesterday by removing the mobile bar. Mr. Garcia stated there have been several inspections since Biketoberfest.

Ms. Miles listed the impacts from moving the stage closer to Main Street.

Mr. Heebner appeared on behalf of the Respondent and stated they believe that if you look at the site plan it appears the stage needs to be 12 feet away Main Street. Mr. Heebner stated there were no measurements regarding where the stage was. Mr. Heebner stated the food vendor was not there because the stage is OSHA approved and it would have been a fire code violation if the vendor was that close to the stage. Mr. Heebner further stated the impact of being found in non-compliance is tremendous for the Respondents.

Mr. Jackson stated the impact of the determination of compliance or non-compliance should have no bearing on that determination.

Mr. Heebner called Mr. Rick Johns for direct testimony.

Mr. Heebner began his direct examination of Mr. Johns. Mr. Johns stated his name and address. Mr. John's further stated his history in code enforcement and his process for the Master Plan Application. Mr. Heebner presented that the Master Plan Application as Respondent's Exhibit 2. Mr. Johns stated he was concerned with the stage construction because of the accident that happened in Indiana and therefore hired an OSHA approved stage. Mr. Johns stated he could not come into compliance within 12 hours because of the manner in which the stage was constructed. Mr. Johns further testified and explained his recollection of events regarding his encounter with City Officials regarding the stage. Mr. Johns stated he received a notice by certified mail about the mobile bar on November 19, 2012.

Mr. Heebner inquired as to the loss of revenue if Mr. Johns is unable to participate in Bike Week outside activities. Mr. Johns stated it would be in the millions.

Mr. Jackson began cross-examination of Mr. Johns. Mr. Jackson asked Mr. Johns if the application layout was the same as previously submitted. Mr. Johns stated the placement of the stage was the same but he upgraded the actual type of stage. Mr. Johns further explained the placement of the stage and that he measured the distance away from the sidewalk with his foot.

Mr. Vukelja inquired of Mr. John's as to his master plan application and the determination of how far the stage was from Main Street.

Mr. Heebner called Ms. Phaedra Lee Harper.

Phaedra Lee Harper stated she completed measurement the day before the meeting she stated they measured 12 from the edge of the sidewalk up to the edge of the brick pavers and then another 2 feet onto the black asphalt to where the feet of the state were. Ms. Harper stated the bar was constructed in a manner that it appeared to be a permanent fixture but they did locate it to a different area.

Mr. Heebner called Mr. Cy Manula.

Mr. Manula stated he has previously sat in on the bike week planning meetings and the members have made it a point to state the drawings are not to scale and also they were permitted to remove items but we could not add items after it was approved. Mr. Manula participated in the measuring of the stage and stated it was 12 feet of brick and then 2 feet to the stage.

Mr. Jackson called Ms. Colleen Miles.

Ms. Miles stated she has done hundreds of inspections during special events. Ms. Miles explained her reasoning for the believing the stage was in non-compliance.

Discussions were held amongst Mr. Vukelja and Ms. Miles regarding the stage placement and the mobile bar construction that was significantly larger than what was submitted.

City called Daniel Webster who came forward and was sworn.

Mr. Webster stated he resided at 21 N. Halifax Avenue which is less than a ½ block to the north. Mr. Webster stated the stage was to occupy the middle third of the property which would mean the stage would back up against the building and fence with the Boothill Saloon. The pictures show the stage was placed in the front third of the property. Mr. Webster stated the problem they are having on Main Street is that there are competing bands playing at Main Street Station and the Boothill and since the stage was moved forward there is nothing blocking the blow back sound which makes it worse for the neighborhood. Mr. Webster stated he has been a resident for the last 15 years and has measured the sound over the years.

John Nicholson came forward and was sworn. Mr. Nicholson stated he was a resident of the area and said there was a problem with the sound during Bike Week and stated the guidelines were in place to minimize the impact on neighborhood residents.

Mr. Jackson presented closing argument.

Mr. Heebner presented closing argument.

Ruling

Mr. Vukelja found the Respondent previously in non-compliance and ordered for any future violation be returned for consideration of a fine up to \$5,000 per occurrence.

CASE NO 11 SMG 12-12-79 – Terra Green III, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.3), at **N Beach Street - Vacant Lot Short Parcel # 5337-17-00-0201** - Violation(s) – Multiple pot holes - First Notified – 5/2/2012.

Respondent was not present.

Mr. Garcia testified on behalf of the City and stated the property was in non-compliance and recommended the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by January 2, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance.

CASE NO 12 SMG 12-12-80 – New Life Bible Church TRC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 304.6, 304.2, 304.13), at **507 5th Avenue** - Violation(s) – Peeling paint; holes and cracks on the exterior surface; broken windows - First Notified – 7/22/2012.

Mr. Garcia testified on behalf of the City and stated the property was in non-compliance and recommended the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by January 2, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance.

CASE NO 13 SMG 12-12-81 – Flavio Enor Prezzi is cited for failure to correct violations of City Ordinance 90-297, at **457 Bayberry Lakes Blvd.** - Violation(s) – No rental license - First Notified – 10/4/2012.

Respondent was in compliance December 4, 2012.

CASE NO 16 SMG 12-12-84 – Hiram A. Miranda, III is cited for failure to correct violations of City Ordinance 90-297, at **710 Washington Street** - Violation(s) – No rental license - First Notified – 9/22/2012.

Respondent was in compliance November 21, 2012.

Miscellaneous Business

There was no miscellaneous business.

Adjournment: The meeting was adjourned at 11:30 a.m.