

CITY OF DAYTONA BEACH MINUTES

SPECIAL MAGISTRATE HEARING

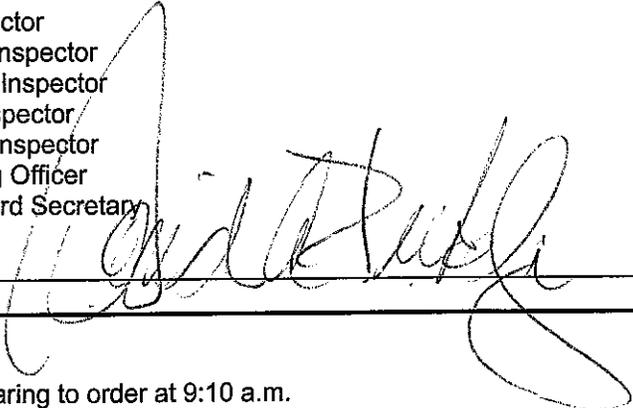
January 8, 2013 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Hector Garcia, Code Compliance Manager
Officer Sheri Siracusa
Mr. Tom Clig, Code Inspector
Mr. Daniel Garcia, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. David Newell, Fire Inspector
Mr. John Stenson, Code Inspector
Ms. Colleen Miles, Zoning Officer
Ms. Aimee Hampton, Board Secretary

Approval of Minutes by:  Special Magistrate

Mr. Vukelja called the Hearing to order at 9:10 a.m.

Mr. Vukelja approved the December 11, 2012 Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton advised the following cases that were in compliance.

CASE NO 5 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.

Respondent was in compliance January 4, 2013.

CASE NO 7 SMG 01-13-02 – Jerreel Wayne Smith is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13), at **1328 Margina Avenue** - Violation(s) – Broken front window - First Notified – 9/14/2012.

Respondent was in compliance January 7, 2013.

CASE NO 8 SMG 01-13-03 – Alvaro & Lourdes Sanchez, Husband & Wife is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.7), at **1416 Margina Avenue** - Violation(s) – Accessory structures erected in side yard - First Notified – 7/27/2012.

Respondent was in compliance January 7, 2013.

Ms. Hampton swore in members of staff.

TPA Appeal – Case 1

Daytona Pit Stop- 42 S. Atlantic Avenue: Appeal of denial of Temporary Promotional Activity Permit based upon the Order of Non-compliance issued by the Code Enforcement Board on December 19, 2012. Requested by: Charly Fedida.

Mr. Charly Fedida came forward and was sworn.

Mr. Clig testified on behalf of the City presented the case history and other previous cases regarding the Respondent having outside sales activity without a permit.

Mr. Vukelja inquired as to if the Respondent has applied for a TPA permit.

Ms. Miles stated the Respondent has not applied for a current TPA.

Mr. Fedida stated that because of the Board's order of non-compliance he will not be able to obtain a TPA for the next 3 years.

Ms. Miles testified on behalf of the City and stated the section of the code related to the issuances of the TPA and the part that relates to the 3 year prohibition.

Mr. Fedida stated if he was not allowed a TPA his business would suffer greatly.

Mr. Vukelja stated in order for him to make a fully informed decision about the impact of the 3 year ban, he wanted the Respondent to present to him financial documents as evidence of the impact of not being able to receive the TPA.

Mr. Jackson stated he did not agree this was a penalty phase of the case as the code enforcement case has ended and this was a separate action for a review of denials as an independent review by the magistrate.

Ruling

Mr. Vukelja ordered the matter be continued until the January 22, 2013 Special Meeting.

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.

Respondent was not present.

Mr. Stenson testified on behalf of the city and presented the case information, violations and exhibits. Mr. Stenson stated the property was still in non-compliance with the roof and exterior surfaces. Mr. Stenson recommended imposing a fine of \$75.00 per day with a maximum of \$10,000.

Ruling

Mr. Vukelja ordered a fine of \$75.00 per day be imposed against the Respondents effective January 2, 2013 to continue until compliance is achieved or reached the maximum amount of \$10,000.

CASE NO 2 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. Ms. Smith provided what she thought was a permit but was the permit application.

Mr. Stenson testified on behalf of the City and stated the only outstanding violation was the failure to obtain the permit. Mr. Stenson stated the permit was applied for but upon review required some corrections. Mr. Stenson recommended amending the compliance date until the next cut-off date.

Ruling

Mr. Vukelja amended his previous order of non-compliance to allow the Respondent until February 6, 2013 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 3 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.

Respondent was not present.

Mr. Stenson testified on behalf of the city and stated the case history, violations and exhibits. Mr. Stenson stated the outside storage has been removed and the junk vehicle has been removed from the right of way and placed in the driveway but is still inoperable. Mr. Stenson further stated the roof still remained in disrepair. Mr. Stenson recommended imposing a fine of \$75.00 per day with a maximum of \$10,000.

Ruling

Mr. Vukelja ordered a fine of \$75.00 per day be imposed against the Respondent effective January 2, 2013 to continue until compliance is achieved or reached the maximum amount of \$10,000.

CASE NO 4 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.

Mark Dowst came forward and was sworn.

Mr. Daniel Garcia testified on behalf of the City and stated the property was currently in non-compliance but recommended amending the compliance date until the next cut-off.

Mr. Dowst stated he was contracted last month regarding pot holes and has hired P & S Paving. Mr. Dowst stated he believed the pot holes should be corrected by the end of next week.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until February 6, 2013 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 6 SMG 01-13-01 – Kenneth & Emma G. Southall is cited for failure to correct violations of the Land Development Code, Art. 17 Sec. 2.189, at **920 Kathy Street** - Violation(s) – Inoperable trailer parked in street - First Notified – 11/13/2012.

Respondent was not present.

Ms. Lankford testified on behalf of the City and presented the case history, violations and exhibits. Ms. Lankford stated she has spoken with the owner who stated he was in the process of removing the trailer.

Ruling

Mr. Vukelja found the Respondent in non-compliance and order 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.

CASE NO 9 SMG 01-13-04 – Gregory F. Brown is cited for failure to correct violations of the Land Development Code, Art. 8 Sec. 2.7; Art. 18 Sec. 7.3; Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.8, 304.15 and 605.1), at **716 Berkshire Road** - Violation(s) – Parking in the yard; outside storage; junk vehicle; exterior doors; electrical fixtures - First Notified – 10/26/2012.

Mr. Gregory Brown came forward and was sworn. Mr. Brown stipulated to the violations but needed some clarification about what needed to be completed.

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.

Ruling

Mr. Vukelja found the Respondent in non-compliance and order 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.

CASE NO 10 SMG 01-13-05 – Patrick James Worsham & Krista Patricia Worsham is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3, at **156 Big Ben Drive** - Violation(s) – **Outside storage** - First Notified – 11/2/2012.

Respondent was in compliance January 7, 2013.

CASE NO 11 SMG 01-13-06 – Doris L. Miles is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3, at **1028 Cadillac Drive** - Violation(s) – Outside storage - First Notified – 11/19/2012.

Respondent was in compliance January 4, 2013.

CASE NO 12 SMG 01-13-07 – David Nourachi is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13, 304.15, 304.14, 304.7, 504.1, 605.5, 603.1, and 704.2) City Code 90-297, at **425 Walker Avenue** - Violation(s) – Broken/inoperable windows; exterior doors; screens; dilapidated roof; plumbing fixtures; electrical outlets; appliances; smoke detectors; no occupational license for rental - First Notified – 9/28/2012.

Mr. Haythem Nourachi, the Respondent's brother came forward and was sworn. Mr. Nourachi stipulated to the violations. Mr. Nourachi stated he had a real estate company as the property managers who were charging him for making repairs but he has since found out they were not taking care of the items.

Mr. Stenson testified on behalf of the City and stated the Respondent should be in compliance by the March cut-off date.

Mr. Nourachi stated he has estimates from a general contractor and believed he could have the items completed by March 6, 2013.

Ruling

Mr. Vukelja found the Respondent in non-compliance and order 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.

MISCELLANEOUS BUSINESS

Case 1

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.**

Attorney Steve Garth appeared on behalf of Attorney Peter Heebner and was representing the Respondents. Mr. Garth stated they have submitted a Motion for Reconsideration of the Magistrate's Finding of Non-compliance and a Motion for Waiver. Mr. Garth stated they had requested to be placed on this agenda as they believed they would not be able to participate in Bike Week 2013 Master Plan Activities, however City Attorney Marie Hartman issued an opinion that basically stated because the application was submitted prior to the Magistrate's Order they would be able to participate this Bike Week but any special events thereafter they would be denied for three years.

Mr. Garth stated his partner Mr. Heebner was not available to be present today but he was requesting the case be placed on the next regular meeting agenda for the opportunity to present a legal argument for reconsideration of the ruling. Mr. Garth stated with respect to the waiver they would not need to present that at this time since they are able to participate in this Bike Week.

Mr. Vukejla reviewed the circumstances surrounding the date of the application and the effect of the non-compliance order.

Mr. Garth stated they did not need to proceed with the waiver for Bike Week 2013 but they have submitted a motion for reconsideration which they would like to be heard at the next meeting.

Mr. Garth stated they would not need to be on the Special Meeting in January as long as they are not denied by the City Commission on January 16, 2013.

Mr. Vukelja inquired if the Respondent's were going to be asking for a waiver of the three year ban of being able to acquire a TPA.

Mr. Jackson stated the criteria for the master plan was under a different section of the code and this case is regarding master plan outside activities.

Mr. Garth stated at some point they would be requesting a waiver in the future for future special events.

Mr. Jackson stated the motion for rehearing, reconsideration and wavier was before the Magistrate and requested clarification about his order regarding the reconsideration and rehearing.

Ruling

Mr. Vukelja stated he was denying the motion for rehearing without prejudice.

Mr. Vukelja further stated in the future regarding these types of cases that he need to see detailed information about the financial hardship and impact the ban has on the businesses.

Adjournment: The meeting was adjourned at 9:55 a.m.