

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

January 22, 2013 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

TPA DENIAL & BIKE WEEK 2013
MASTER PLAN APPEALS

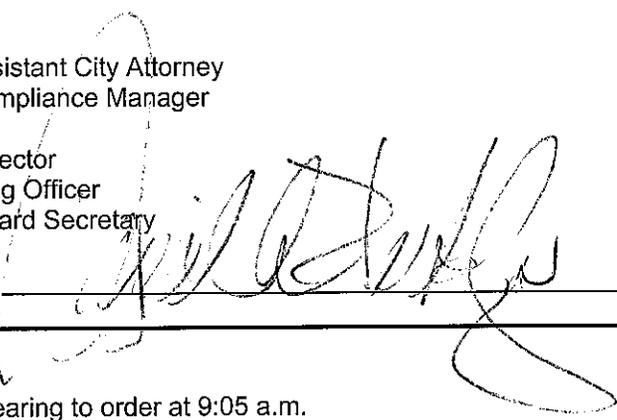
ATTENDEES:

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
Ms. Colleen Miles, Zoning Officer
Ms. Aimee Hampton, Board Secretary

Approval of Minutes by: _____

 Special Magistrate

Mr. Vukelja called the Hearing to order at 9:05 a.m.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton advised there were no announcements.

Ms. Hampton swore in members of staff.

TPA Denial Waiver:

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.

Attorney Walker Foster appeared on behalf of the Respondent, Daytona Pit Stop.

Mr. Charly Fedida came forward and was sworn.

Mr. Foster stated the case was before the Magistrate for appeal of the 3 year ban for TPA's based upon the order of non-compliance issued by the Code Enforcement Board on December 19, 2012.

Mr. Vukelja reviewed the criteria in the code regarding considering waiver of the three year ban in issuing TPA's.

Mr. Jackson advised the section Mr. Vukelja was reading was regarding the Master Plan not the TPA's. Mr. Jackson stated the criteria for review was the same as Master Plan.

Mr. Vukelja stated at the last meeting he suggested Mr. Fedida focus on the criteria regarding the gravity of the violation and suggested when he came back to present specifics with regard to the financial impact of the three year ban.

Mr. Foster presented Respondents' exhibit 1 related to the financial impact of Mr. Fedida being prohibited from obtaining a TPA for three years. Mr. Foster stated the figures show that the TPA revenue was approximately 20% percent of his entire revenue for the entire year.

Mr. Vukelja inquired of the City about the issuance of the citation and original notice of violation.

Mr. Clig reviewed the case and provided information related to the most current case that the Respondent was found in non-compliance and additionally stated the dates that materials were previously outside without a TPA.

Mr. Foster stated the violations consisted of a shirt rack outside. Mr. Foster further stated his client was not present during this time and it was a movable clothing rack which was supposedly being taken to another location.

Mr. Vukelja asked Mr. Foster to provide his argument about how financial impact relates to the gravity of the violation.

Mr. Foster stated the loss of revenue so significant for having a simple clothing rack outside is punitive in nature. Mr. Foster stated the punishment being imposed was not commensurate to the violation that was committed.

Mr. Foster concluded his argument.

Mr. Jackson stated specifically regarding the gravity of the violation, the additional considerations are the fault of the applicant in creating the condition which led to the order of non-compliance. The Code Inspector informed the Board that the applicant had been told previous times about displays but when looking at the pictures it appears customers are making purchases and additionally there is signage that says T-shirts for sale. Mr. Jackson stated the position of the City is that financial impact would not be a proper evaluation of the gravity of the violation. Mr. Jackson stated the penalty was created in an effort to deter the activity the City decided it does not want to occur.

Mr. Vukelja stated his issue with the legislation is that as Special Magistrate or Code Board even the most egregious violations typically are only issued fines of \$250.00 per day which does not compare to the financial impact of what could happen to the businesses by not being able to participate for 3 years.

Mr. Jackson responded by stating that the City acknowledges that any business during the special event period is going to be financially impacted. The penalty imposed for the violation was not a monetary penalty however there is a substantial residual effect which is what was being heard today. Mr. Jackson further stated there is strong recognition that businesses who are allowed to go out for 25 days instead of 20 days that there is an advantage that other businesses do not have.

Mr. Vukelja inquired as to what his discretion was with regard to the waiver.

Mr. Jackson stated he believed he had full discretion with regard to the waiver, that the Magistrate could lessen the 3 years to 1 year or he can create full discretion regarding imposing restrictions or conditions.

After review of the code Mr. Vukelja and Mr. Jackson it was determined with regard to the specific section regarding subsection (d) there was no latitude and that it is an all or nothing provision.

John Nicholson came forward and was sworn. Mr. Nicholson stated he is a citizen in the neighborhood and he walks past the business daily. Mr. Nicholson stated he believes it has been several hundred times

the Respondent has done this violation. Mr. Nicholson stated there are many other businesses who are not violating the rules and those businesses are surviving without breaking the law.

Ruling

Mr. Vukelja denied the waiver of the three year ban based upon the violation of the will fine as he finds violations of will fine orders grave.

Mr. Fedida stated he did not have a will fine until this case and he did not violate the will fine order.

Mr. Vukelja reviewed the case file again and stated he believed a will fine order had been violated. It was clarified that there was no previous will fine order that was in place that was violated.

Mr. Clig stated the will fine case was the first time it was brought before the board. Mr. Clig stated he issued a Notice of Violation 4 other times previously.

Discussions were held amongst Mr. Vukelja and Mr. Jackson regarding the determination of the gravity of the violation.

Final Ruling

Mr. Vukelja withdrew his previous order of denial and subsequently granted the Respondent's request for waiver.

Hearing of Appeals:

Case 2 was heard before Case 1 upon agreement by the parties.

MIKEY LUV'S BAR & GRILL – 415 MAIN STREET, Requested by: Timothy N Viens. Appeal of denial of Bike Week Executive Committee and City Commission for participation in Master Plan outside activities for Bike Week 2013 due to: Not open 250 days prior to application date.

Case 2

Attorney Jim Morris appeared on behalf of Mikey Luv's Bar & Grill. Mr. Morris explained the process of the Bike Week Master Plan Guidelines and explained one of the conditions is the business must be open for 250 days a year in advance of the application deadline. Mr. Morris stated his clients were not open 250 days prior to the application deadline date and therefore were denied participation by the committee. Mr. Morris stated they were before the Magistrate to request a waiver of denial of their participation in the Master Plan. Mr. Morris reviewed the criteria the Magistrate is to consider when reviewing the appeals. Mr. Morris stated the business opened in early October but it was an existing business. Mr. Morris stated the business has been opened continuously since October and he estimated that when Bike Week begins they would be open about 175 days. Mr. Morris presented two letters from Local businesses describing the nature of their business and the primary proprietor Mr. Mike Masella and his history with other local businesses.

Ms. Colleen Miles appeared on behalf of the City and stated the business was not open for 250 days prior to the application deadline.

Mr. Vukelja reviewed the guidelines and the section related to businesses required to be open 250 days and also reviewed the criteria he is to consider regarding waivers.

Ruling

Mr. Vukelja granted the appeal of Mikey Luv's Bar & Grill.

Case 1

ROAR MOTORCYCLES, INC. – 420 N. BEACH STREET: Requested by: Kathy Tolleson.
Appeal of denial of Bike Week Executive Committee and City Commission for participation in Master Plan outside activities for Bike Week 2013 due to: Not open 250 days prior to application date.

Ms. Kathy Tolleson from Roar Motorcycles came forward and was sworn. Ms. Tolleson stated her denial was based upon missing the 250 day rule by 10 days however she has been in business with the same business in the City of Daytona Beach for 5 years but she moved locations to 420 N Beach Street.

Mr. Colleen Miles appeared on behalf of the City and stated the Bike Week Task Force would support granting the appeal as they are a year round business and have been in the community for some time.

Ruling

Mr. Vukelja granted the appeal of Roar Motorcycles & Grill.

Miscellaneous Business

1. Mr. Vukelja stated he was wrestling with the determination of "gravity of the violation" as stated in the criteria for reviewing appeals and he was also concerned about the 3 year ban on TPA's and the financial impact that causes on businesses considering there are more egregious violations and it would make things easier if there was some discretion with regard to the 3 year ban.

Adjournment: The meeting was adjourned at 10:50 a.m.