

CITY OF DAYTONA BEACH MINUTES

SPECIAL
MAGISTRATE
HEARING

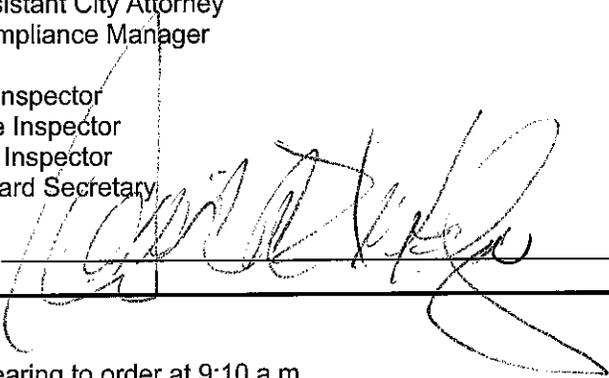
March 19, 2013 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Hector Garcia, Code Compliance Manager
Officer Sheri Siracusa
Mr. Edwin Lopez, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. John Stenson, Code Inspector
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 January 22, 2013 TPA Denial & Bike Week 2013 Master Plan Appeal Minutes and the February 12, 2013 Regular Meeting Minutes.

Ms. Hampton advised there were no announcements.

Ms. Hampton swore in members of staff that would be testifying.

CASE NO 8 SMG 02-13-12 – Deep Lounge, Inc. and Another Plan B, Inc. d/b/a 509 Lounge is cited for failure to correct violations of the Land Development Code, Art. 1 Sec.5.3; Art. 17 Sec. 2.13(b); Art. 18 Sec. 6.6; Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.5 and 308.1); City Code 42-211(b), at **509 Seabreeze Blvd.** - Violation(s) – Non-conforming use as a bar instead of a restaurant; Alcoholic beverages primarily being served; illegal signage; rodent harborage; infestation; amplified noise violation - First Notified – 1/25/2013 (handwritten).

Respondent was not present.

Mr. Vukelja stated he was contacted by Attorney David Hood who was a State Representative and pursuant to statute was allowed a continuance. Mr. Vukelja stated the only reason the matter was continued to this Agenda was because it appeared the parties were going to resolve the matter.

Mr. Jackson stated the perspective of the City is they are further away from resolution than before. Mr. Jackson also stated the City acknowledges it is not an emergency situation and are compelled by statute to continue the case. Mr. Jackson requested the matter be continued to the June meeting because Mr. Hood had requested a date after May 20, 2013.

Ruling

Mr. Vukelja ordered the case be continued until June 11, 2013.

CASE NO 1 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. Jackson presented the case review and stated everything has been completed except the permit for the stairs. Mr. Jackson stated the permit still has not been obtained and because the case has been on-going since December the City recommended a fine of \$25.00 per day with a maximum of \$1,000.00. Mr. Jackson stated the City acknowledged they did receive a call from the contractor this morning asking what he needed to do as of today.

Ms. Smith stated she checked with permits and licensing this morning and has paid for the building permit on February 19, 2013. Ms. Smith stated she now has to pay another \$114.95 and she spoke with the contractor who stated he was going to get the permit today. Ms. Smith stated the issue for the stairs was the spacing was a little short between the first step and second step.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until April 3, 2013 to come into compliance or an automatic fine of \$25.00 per day with a maximum of \$1,000 will be imposed.

CASE NO 2 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. Hany Nassif came forward and was sworn.

Mr. Jackson reviewed the case history and presented a letter he just received from Mr. Nassif. Mr. Jackson stated staff recommended a compliance date of May 8, 2013.

Mr. Nassif confirmed the lawsuit was now settled and stated the repairs would take approximately 3-4 weeks.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until May 8, 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 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. Leo Nourachi, the owner's brother, came forward and was sworn.

Mr. Jackson presented the case information and stated the owner must obtain restoration permits and electrical permits. The last inspection the Inspector found there was work being done without restoration permit and that even though this would be a new violation the staff wanted to bring it to the attention of the owner. Mr. Jackson stated staff recommended a fine be imposed of \$75.00 per day with a maximum of \$15,000.00.

Mr. Nourachi stated has received two contracts on March 3, 2013 for the repairs and one contractor should be finished within a week and the other still needs to obtain the permit. Mr. Nourachi stated the electrical was completed. Mr. Nourachi stated the contractor told him approximately 3-4 weeks for compliance.

Mr. Jackson clarified the City acknowledged the electrical permits have been obtained.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to May 8, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 4 SMG 02-13-08 – Johnnie Moore is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 307.1); City Code 90-297(a), at **331 Bartley Road** - Violation(s) – Trash, junk, debris and yard waste on the premises; No occupational license for rental - First Notified – 1/9/2013.

Respondent was in compliance March 6, 2013.

CASE NO 5 SMG 02-13-09 – Rafica Muhammad Itani is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13.1, 304.15, 304.7), at **602 El Dorado Street** - Violation(s) – Damaged entry door and window; roof, soffit and fascia damage - First Notified – 11/28/2012.

Respondent was in compliance March 5, 2013.

CASE NO 6 SMG 02-13-10 – Joyce Dixon Revocable Trust dtd 9/15/06 is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.10, 304.12, 304.15, 304.3, 307.1, 604.3, 605.1); City Code 90-297(a), at **308 Marion Street** - Violation(s) – Rotten wood on stairways, rail decks and garage door; no electrical power; exterior door assembly damage; no premises identification numbers; no occupational license for rental - First Notified – 12/18/2012.

Respondent was in compliance March 5, 2012.

CASE NO 7 SMG 02-13-11 – Bakare Organization, LLC and LoanBuySale, Inc. d/b/a LBS Tax Service is cited for failure to correct violations of the Land Development Code, Art. 18 Sec.6.6(a); Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.6), at **986 Orange Avenue** - Violation(s) – Signs posted on city right of way, illegal amount of window sign covering window; exterior walls shall be free from holes, breaks and loose or rotting materials - First Notified – 1/24/2013.

Aiken Bakare came forward and was sworn.

Mario Cooper came forward and was sworn.

Mr. Jackson reviewed the case information and history. Mr. Jackson stated the case was in compliance and the City was requesting a will fine order for window signage.

Mr. Cooper stated he understood the meaning of the will fine order and would not be in violation again.

Mr. Bakare stated he was the owner of the property and did not live here and did not understand why he was fined for the off-site signage.

Mr. Cooper stated he was going to pay the fines for the off-site signage.

Ruling

Mr. Vukelja found the Respondents in compliance but for any future repeat violations of the illegal amount of window sign covering the Respondent shall be returned to a subsequent meeting for consideration of a fine up to \$5,000 per occurrence.

CASE NO 10 SMG 03-13-14 – The Florida LP is cited for failure to correct violations of City Code 90-297(a), at **270 Dahoon Holly Drive** - Violation(s) – No rental license - First Notified – 1/17/2013.

Respondent was not present.

Mr. Jackson introduced the case and called Inspector John Stenson for testimony.

Mr. Jackson began direct examination of Inspector Stenson who described the violations he observed of no rental license. Mr. Stenson further provided testimony of his process of noticing the owner about the violations and stated the property was currently in non-compliance. Mr. Stenson stated the owners have applied for the license and recommended the May cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by May 8, 2013 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

CASE NO 11 SMG 03-13-15 – Chester Construction & Development Corporation is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 5.3; Art. 8 Sec.2.7; Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.8, 304.2, 304.7, 605.1), at **731 Mason Avenue** - Violation(s) – Non-conforming use (car sales, gym area, eatery); Parking on unimproved surfaces; junk vehicles; peeling paint; dilapidated roof; electrical wiring - First Notified – 1/16/2013.

Respondent was in compliance March 14, 2013.

CASE NO 12 SMG 03-13-16 – Carl Woods is cited for failure to correct violations of the Land Development Code, Art. 18 Sec.7.3, at **535 Brentwood Drive** - Violation(s) – Outside Storage - First Notified – Will Fine Entered 4/12/2011.

Mr. Carl Woods came forward and was sworn. Mr. Woods stipulated to non-compliance.

Mr. Jackson reviewed the case history and stated the case was before the Magistrate for imposition of a fine based upon violation of the existing Will Fine Order. Mr. Jackson stated there was a previous violation of a fine of \$150.00 plus a running fine that ultimately came into compliance. Mr. Jackson stated Mr. Woods constructed a fence around the yard however that does not cure the violations.

Mr. Woods stated he never received notice for the violations.

Mr. Stenson stated because of the will fine the case was brought straight to hearing and stated Ms. Hampton sent out the notice of hearing.

Ms. Hampton stated a signature was obtained for the amended notice of hearing to the March 19, 2013 date.

Mr. Woods stated he would need two weeks for compliance.

Mr. Jackson stated the recommendation from staff is that a fine of \$300.00 for the will fine violation and compliance by the next cut-off.

Ruling

Mr. Vukelja ordered all outside storage be removed by April 2, 2013, failing that an automatic fine of \$300 will be imposed on April 2, 2103 and the Respondent will also be returned to a subsequent hearing for consideration of the imposition of a fine of \$1,000 per day.

The meeting was postponed at 9:55 a.m.

The meeting was resumed at 11:20 a.m. to hearing Case # 9.

CASE NO 9 SMG 02-13-13 – Abraham Kamaly and Two Six Five, LLC d/b/a Bishop's Tavern is cited for failure to correct violations of the Land Development Code, Art. 1 Sec.5.3; Art. 17 Sec. 2.13(b); Art. 18 Sec. 6.6; Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.5 and 308.1); City Code 42-211(b), at **512 Seabreeze Blvd.** - Violation(s) – Non-conforming use as a bar instead of a restaurant; Alcoholic beverages primarily being served; illegal signage; rodent harborage; infestation; amplified noise violation First Notified – 1/25/2013.

Attorney Brett Hartley appeared on behalf of Bishop's Tavern and Mr. Kamaly.

Mr. David Marshlack came forward and was sworn.

Mr. Jackson introduced the case and called Inspector John Stenson for direct examination.

Mr. Jackson began direct examination of Mr. Stenson that included Mr. Stenson's credentials and the date and time of the violations he observed which included non-conforming use, illegal signage, rodent harborage, infestation and amplified noise violation. Mr. Stenson stated the non-conforming use was the operation of the business as a bar and not a restaurant. Mr. Stenson testified to his inspection dates and the results of the inspection. Mr. Stenson stated the City was requesting the property be found in non-compliance and come into compliance by the next cut-off date.

Mr. Jackson concluded is direct examination of Mr. Stenson.

Mr. Hartley began cross-examination of Inspector Stenson. Mr. Hartley inquired of Mr. Stenson his knowledge of the determination of the non-conforming use and the menu that was submitted to the zoning officer. Mr. Hartley reviewed the pictures and questioned Mr. Stenson regarding the images of the kitchen equipment in the pictures. Mr. Hartley asked Mr. Stenson about the pest control violation and the sound violations. Mr. Hartley presented a sound permit to Mr. Stenson to view. Mr. Hartley further asked about the remaining violation of the signage.

Mr. Hartley concluded his cross-examination of Inspector Stenson.

Mr. Jackson began his re-direct examination of Mr. Stenson.

Mr. Jackson called Hector Garcia for direct examination.

Mr. Jackson began direct examination of Mr. Garcia that included Mr. Garcia's credentials and his observations on the inspection dates and his observations of the violations. Mr. Garcia stated there were no tables for seating or waiter services, and also the kitchen was used for storage. Mr. Garcia also stated there were no cooks or chefs located in the kitchen area.

Mr. Hartley had no questions of Mr. Garcia.

Mr. Jackson concluded the City's case.

Mr. Hartley called Mr. David Marshlack for direct examination.

Mr. Hartley began direct examination of Mr. Marshlack that included his ownership of the business and his initiating and operation of the business. Mr. Marshlack stated he was told by the City they only had to serve food and their initial foods consisted of different rice bowls. Mr. Marshlack stated the kitchen was operational and presented a food order that was placed prior the inspection. Mr. Marshlack stated they were working on renovating the suite next to them where they are going to serve tapas style. Mr. Hartley presented a health inspection report from the health department. Mr. Marshlack stated he has employees that can cook food if it is ordered. Mr. Marshlack reviewed the status of next door units and they only were cleaning the place up where the ceiling caved in. Mr. Marshlack stated they took craft paper and covered the window because it looked bad on the inside. Mr. Hartley reviewed the issuance of the sound permit for the amplified sound with Mr. Marshlack.

Mr. Harley concluded his direct examination of Mr. Marshlack.

Mr. Jackson began cross-examination of Mr. Marshlack that included questions about how much food is ordered on a typical night and the type of food that was cooked or prepared. Mr. Marshlack stated most of the food served did not need to be cooked as it was hoagie sandwiches. Mr. Marshlack stated he does serve chicken that is typically cooked ahead of time and heated up in a microwave.

Mr. Jackson stated he did obtain a copy of the agreement that was signed with the City and also reviewed the definition of a restaurant according to the City Code.

Mr. Hartley called Stefan Starvis for direct testimony.

Mr. Starvis came forward and was sworn.

Mr. Hartley began his direct examination of the Mr. Starvis that included is presence during the code inspection and his knowledge of what occurred during the inspections. Mr. Starvis stated the food service was sporadic and depending on orders. Mr. Starvis stated the date of the inspection they were waiting on a delivery of food. Mr. Starvis further stated they have Eco Labs for pest control and have never had an issue with infestation or rodent harborage.

Mr. Hartley concluded his direct examination of Mr. Starvis.

Mr. Jackson began his cross- examination of Mr. Starvis. Mr. Jackson provided a copy of the menu and Mr. Starvis verified it was a sandwich menu. Mr. Jackson further asked Mr. Starvis about the description of the kitchen.

Mr. Jackson concluded his cross- examination of Mr. Starvis.

Mr. Vukelja asked Mr. Starvis if he considered the bar supporting a restaurant or a restaurant supporting a bar.

Mr. Starvis stated they do have much higher alcohol sales than food sales.

Mr. Vukelja asked Mr. Starvis what food was actually cooked and prepared at the business.

Mr. Starvis stated only the chicken breast was pre-cooked but it is reheated before serving. Mr. Starvis stated the majority of the food was like prep food.

Mr. Hartley concluded the Respondent's case.

Ruling

Mr. Vukleja found the Respondent in non-compliance and ordered the Respondent come into compliance by May 8, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

Discussions were held amongst the parties regarding what constituted compliance.

Miscellaneous Business

There was no miscellaneous business.

Adjournment: The meeting was adjourned at 1:20 p.m.