

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

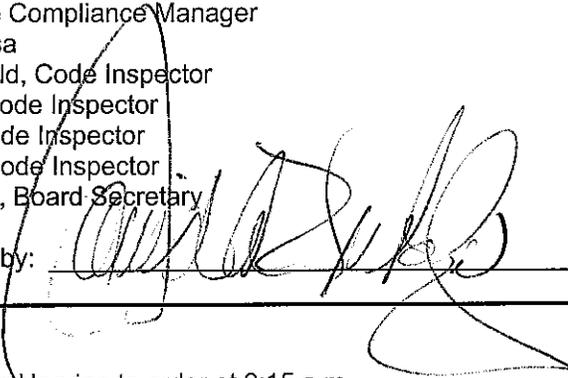
July 16, 2013 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Hector Garcia, Code Compliance Manager
Officer Sheri Siracusa
Mr. Michael Fitzgerald, Code Inspector
Mr. Daniel Garcia, Code Inspector
Mr. Eddie Lopez, 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 9:15 a.m.

Mr. Vukelja approved the June 11, 2013 Regular Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton advised the following cases were in compliance.

CASE NO 5 SMG 04-13-21 – Main Street Properties One, LLC is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 4.3 (c), at **211 Fairview Avenue** – Violation(s) – Dorm living
First Notified – 1/26/2013.

Respondent was in compliance July 15, 2013.

CASE NO 6 SMG 05-13-23 – Pinchas & Eva Mamane is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.3, 304.15, 304.2, 304.6, and 304.7), at **511 Main Street** - Violation(s) – Ceiling damage; peeling paint; cracks/holes; rotted wood - First Notified – 6/20/2013.

Respondent was in compliance July 15, 2013.

CASE NO 7 SMG 05-13-26 – Eric N. Stack is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC 105.1), at **380 Jefferson Street** - Violation(s) – No permit for renovations/construction work - First Notified – 3/13/2013.

Respondent was in compliance July 16, 2013.

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Respondent was in compliance July 15, 2013.

CASE NO 7 SMG 05-13-26 – Eric N. Stack is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC 105.1), at **380 Jefferson Street** - Violation(s) – No permit for renovations/construction work - First Notified – 3/13/2013.

Respondent was in compliance July 16, 2013.

Ms. Hampton swore in members of staff.

CASE NO 1 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.

Respondent was in compliance July 3, 2013.

CASE NO 2 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 via telephone on behalf of the Respondents.

Mr. Jackson presented the case on behalf of the City and stated all violations have been corrected and the property was now in compliance and the City was requesting a Will Fine Order. Mr. Jackson described the necessity for the will fine order due to the nature of the violations. Mr. Jackson called Inspector Stenson to testify.

Inspector Stenson stated the property was in compliance but it is very easy for them to come out of compliance so the City's request for will fine was being requested to deter the non-compliance.

Mr. Hartley presented his argument regarding why a will fine order should not be imposed. Mr. Hartley stated the signage, rodent harborage and the sound permit was quickly remedied and further stated there have been no other historic issues with this property.

Mr. Vukelja inquired of the City regarding the purpose of the will fine order.

Mr. Jackson stated the provision for repeat violation was found in Florida Statutes and the designation of a repeat violation would merely mean the case can be brought to the Magistrate more immediately rather than the normal code process of allowing time to comply before bring the case before the Magistrate and further stated there is due process afforded with regard to a hearing and that a fine is not automatically imposed.

Mr. Vukelja inquired as to when the Respondent came into compliance.

Mr. Stenson stated the compliance date was May 14, 2013. Mr. Stenson stated the non-conforming use was corrected by adding more seating and stocked the kitchen with food and has a full working kitchen.

Ruling

Mr. Vukelja found the case warranted the designation of repeat violations because of the nature of the violations and found for any future repeat violation be returned to a subsequent meeting for consideration of a fine up to \$5,000 per occurrence.

CASE NO 3 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. Jackson presented the case on behalf of the city and reviewed the case history of the violations. Mr. Jackson stated he relayed to Mr. Hood the few remaining issues were simple to remedy regarding certification paperwork and seating arrangement. Mr. Jackson stated the current status of the property was non-compliance and called Inspector Stenson to testify.

Mr. Stenson stated there was progress but remaining issues were pest control paperwork, certification paperwork for the hood system and the seating arrangements.

Mr. Jackson presented the memo that he sent to Mr. Hood. Mr. Jackson further stated the City requested a fine of \$250.00 per day with a maximum of \$20,000.00.

Mr. Vukelja inquired about the section of the ordinance that requires a certain percentage of sales be of food in order to serve alcohol.

Mr. Jackson reviewed the ordinance and stated that was in the licensing requirements.

Ruling

Mr. Vukelja imposed a fine of \$250.00 per day against the Respondents effective July 3, 2013 to continue until compliance is achieved or reached the maximum amount of \$20,000.00.

CASE NO 4 SMG 04-13-18 – Sealevel Properties, LLC is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 4.3 (c); Art. 18 Sec. 7.3.1; Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.7, 304.13, 304.15, 304.2, 304.7, 505.1) City Ordinance 90-297(a), at **142 N. Peninsula Drive** – Violation(s) – Dorm living; outside storage; damaged fence; peeling paint; dirt & grime; missing glass; missing soffits; no running water; no occupational license.

Respondent was not present.

Mr. Jackson stated some work has been completed but it was not fully in compliance. Mr. Jackson called Inspector Garcia to testify.

Mr. Garcia stated some work has been completed but the missing soffits and broken window still remain along with the dirt and grime and peeling paint.

Ruling

Mr. Vukelja imposed a fine of \$50.00 per day against the Respondents effective July 3, 2013 to continue until compliance is achieved or reached the maximum amount of \$15,000.00.

CASE NO 8 SMG 05-13-29 – Ellys E. Ramos is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.7, 302.8, & 307.1), at **523 Park Drive** - Violation(s) – Damaged wood fence; excessive yard debris; dead tree; inoperable vehicle - First Notified – 3/12/2013.

Respondent was not present.

Mr. Jackson presented the case on behalf of the City and called inspector Lopez to testify.

Mr. Lopez stated he has spoken with the owner's son but there have been no attempts to fix the property. Mr. Lopez stated the property appears vacant and recommended imposing a fine of \$50.00 per day with a maximum of \$15,000.00.

Ruling

Mr. Vukelja imposed a fine of \$50.00 per day against the Respondents effective July 3, 2013 to continue until compliance is achieved or reached the maximum amount of \$15,000.00.

CASE NO 9 SMG 07-13-31 – Cardinal Motel Florida, LLC c/o RAIT Financial Trust is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.7 and 304.2), at **740 N. Atlantic Avenue (Vacant Lot)** - Violation(s) – Failure to maintain fencing: damaged, broken, loose, missing and rotting fencing materials; fading, peeling or missing paint - First Notified – 1/17/2013.

Respondent was not present.

Mr. Jackson presented the case on behalf of the City and called Inspector Fitzgerald to testify.

Mr. Fitzgerald stated he has spoken with the owners and the fence should be removed by the next cut-off.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents come into compliance by August 7, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 10 SMG 07-13-32 – Del Aire Florida, LLC c/o RAIT Financial Trust is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.7 and 304.2), at **750 N. Atlantic (Vacant Lot)** - Violation(s) – Failure to maintain fencing: damaged, broken, loose, missing and rotting fencing materials; fading, peeling or missing paint - First Notified – 1/17/2013.

Respondent was not present.

Mr. Jackson presented the case on behalf of the City and called Inspector Fitzgerald to testify.

Mr. Fitzgerald stated it was the same company as the previous case and he reiterated that the fence should be removed by the next cut-off.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents come into compliance by August 7, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 11 SMG 07-13-33 – Burgoyne Properties, Inc. is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1. (Ref. FBC Supp IPMC 303.13), at **174 N. Beach Street a/k/a 141 Bay Street** - Violation(s) – Cracked window - First Notified – 3/11/2013.

Respondent was not present.

Mr. Jackson presented the case and called Inspector Garcia to testify.

Mr. Garcia stated a representative from the Mediterranean Restaurant was present but had to leave. Mr. Garcia stated the only violation was a cracked window and it should be corrected by the next cut-off.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents come into compliance by August 7, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 12 SMG 07-13-34 – Michael Ray Williams & Mark Steven Williams as JTRS is cited for failure to correct violations of the Land Development Code, Art. 18 Sec.7.3.1; Art. 19 Sec. 1.1. (Ref. FBC Supp IPMC 304.13, 304.2, 304.7); Art. 18 Sec. 5.6, at **36 S. Noble Street** - Violation(s) – Outside storage; damaged windows; peeling/faded paint; damaged roof - First Notified – 10/30/2012.

Mr. Mark came forward and was sworn. Mr. Williams stipulated to the violations.

Mr. Garcia stated Mr. Williams needed to repair the roof in the rear and remove the tarp in the front of the property and remove the outside storage in the rear and paint and remove the boards on the windows.

Mr. Williams stated he was unemployed and needed to borrow money to fix the roof and needed more time.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents come into compliance by September 4, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 13 SMG 07-13-35 – Linda Jones is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1. (Ref. FBC Supp IPMC 302.8, 304.13 and 304.7), at **801 Forest Lane** - Violation(s) – Junk vehicles; broken windows; dilapidated roof - First Notified – 5/15/2013.

Respondent was not present.

Mr. Jackson presented the case on behalf of the City and called Inspector Stenson to testify.

Inspector Stenson stated the property was in non-compliance with all the violations and requested the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents come into compliance by August 7, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 14 SMG 07-13-36 – Joy Shellings 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 302.8), at **N Keech Street - Vacant Lot Parcel # 5238-19-00-0211** - Violation(s) – Outside storage; Junk vehicle - First Notified – 5/10/2013.

Respondent was in compliance July 1, 2013.

CASE NO 15 SMG 07-13-37 – Randall K. Neland is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 304.13, 304.10, 304.14, 304.7, 304.6, 304.4, 304.15, 304.1), at **145 Kingston Avenue**- Violation(s) – Windows, decks, screens, roof, exterior surfaces, structural members, exterior doors, general exterior structure, property is unsecure. First Notified – 5/29/2013.

Mr. Randall K. Neland came forward and was sworn. Mr. Neland stipulated to non-compliance and presented pictures. Mr. Neland stated he has applied for the permit.

Inspector Stenson stated the Respondent should be in compliance by the next cut-off date.

Mr. Neland stated he has been working on making corrections but now he needed a permit to repair the porch. Mr. Neland described the history of the house and neighborhood.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondent be returned to the August 13, 2013 meeting for the determination of a compliance date.

Mr. Neland stated he is the only person who has been maintaining Kingston Avenue and the City has not done anything.

CASE NO 16 SMG 07-13-38 – Navarra Construction, Inc. is cited for failure to correct violations of the Land Development Code, Art, 8 Sec. 2.7, at **521 Pine Street** - Violation(s) – Parking in the yard - First Notified – 3/7/2013; 4/1/2013 (posted).

Respondent was not present.

Mr. Jackson presented the case information and called Inspector Stenson for testimony.

Mr. Stenson stated there was consistent parking in the grass but they were now in compliance and the City was requesting a will fine order.

Mr. Jackson stated he spoke with the property owner who believed an agreement had been worked out with the tenant.

Ruling

Mr. Vukelja found the Respondent was in non-compliance but for any future repeat violation the Respondent shall be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 17 SMG 07-13-39 – Taube Properties, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 704.2, 305.3, 304.6, 302.3, 304.13); Art. 19 Sec. 1.1 (Ref. FBC 105.1); Ch. 90-297 City Code, at **288 N. Seneca Street** - Violation(s) – Smoke detectors; interior surfaces; exterior surfaces; sidewalks/driveways; screens; working without permits (windows); no rental license - First Notified – 4/5/2213.

Logan Breen came forward and was sworn. Mr. Breen stated he was managing member of the management company and stipulated to non-compliance.

Mr. Stenson stated the property should be able to be in compliance by the next cut-off date.

Mr. Breen stated he could be in compliance by the next cut-off but needed some clarifications regarding some conflicting things about which permits and licenses he needs.

Mr. Jackson called Supervisor Hector Garcia to testify.

Mr. Garcia explained the rental license issue and how the Respondent needed to come into compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondents come into compliance by August 7, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day plus a one-time administrative fine of \$250.00.

CASE NO 18 SMG 07-13-40 – John G. Taylor is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC 105.1), at **223 Strawberry Lane** - Violation(s) – No valid roof permit - First Notified – 5/14/2013.

John Taylor came forward and was sworn. Mr. Taylor stipulated to the violations.

Mr. Stenson stated the property there have been roof permits in the past but the work was never completed and the permits were never finalized and expired. Mr. Stenson stated the property was in non-compliance.

Mr. Taylor said he has been trying to work with the bank to get a modification but the bank has kept his insurance money that he was going to use to fix the roof. Mr. Taylor said he was in foreclosure but has been working on a modification for two years and the bank has been dragging their feet. Mr. Taylor stated one way or the other he would either get the permit or the bank would be taking the property.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents come into compliance by August 7, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

Miscellaneous Business

There was no miscellaneous business.

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