

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

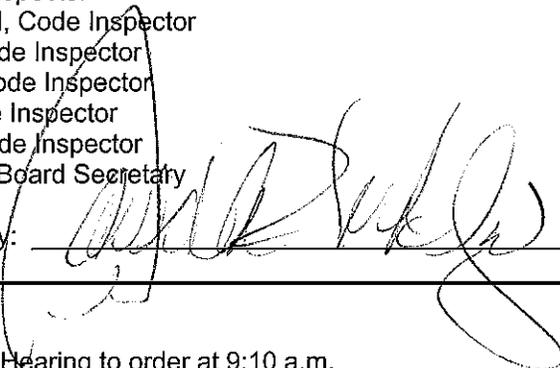
August 13, 2013 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Officer Sheri Siracusa
Mr. Tom Clig, Code Inspector
Mr. Michael Fitzgerald, Code Inspector
Mr. Daniel Garcia, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. David Newell, Fire 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 July 16, 2013 Regular Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton asked Mr. Vukelja if he would like to hear the Biketoberfest Master Plan Appeal cases.

Mr. Vukelja called the Biketoberfest Master Plan Appeal Cases*

*Minutes done separately

Ms. Hampton swore in members of staff.

After the Biketoberfest Master Plan Appeal Cases, Mr. Vukelja began the regular meeting Agenda:

CASE NO 1 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 in compliance July 30, 2013.

CASE NO 2 SMG 05-13-27 – HFDB, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.3, 304.2, 304.6, and 307.1), at **100 N. Nova Road** - Violation(s) – Peeling paint; Trash; Junk; Debris scattered; Pot holes on and around rear parking area - First Notified – 3/5/2013.

Respondent was in compliance August 9, 2013.

CASE NO 14 SMG 08-13-44 – Edward C. Gillespie & Patricia Dederick H & W is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 5.3, at **601 Wisteria Road** - Violation(s) – Non-conforming use - short term rentals - First Notified – 5/31/2013.

Attorney Dennis Bayer appeared on behalf of the Respondents and stipulated to the violations and requested a week for compliance to remove the internet ad from advertising the property as a short term rental.

Mr. Jackson presented the case on behalf of the City and stated the City agreed to a one-week compliance date.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by August 20, 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 05-13-30 – Tudja & Kaival, LLC d/b/a Heritage Inn is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.4, 302.7, 304.13.1, 304.13.2, 304.14, 304.15, 304.2, 304.6, 304.7, 305.3, 305.4, 305.5, 305.6, 306.1, 307.1, 307.2.1, 307.2.2, 307.3.2, 308.2, 506.1, 506.2, 601.2, 602.2, 603.1, 605.1, 605.3, 704.2,); Art. 18 Sec. 2.13, at **1100 S. Ridgewood Avenue** - Violation(s) – Over grown weeds and plant growth throughout the property; Accessory structures: Fencing is broken or fallen on premises; Window and Door Frames: rotten or decayed wood throughout premises - every window and door frame shall be in sound condition; Glazing materials: window glass is cracked and/or broken; All windows required to open and hold in open position by window hardware; Torn and missing insect screens on windows; Exterior Doors: repair all exterior doors that are cracked or broken; Protective treatment: peeling paint, and oxidation throughout premises; Exterior Walls: cracks, breaks, and holes in exterior walls throughout premises. Roofs and drainage: roof shingles are weathered and deteriorated; Interior surfaces: peeling paint on interior walls, windows and doors; Stairs and walking surfaces: stairway towards rear of property needs railing installed - all handrails and guards that are loose need to be tightened and sturdy. Additionally, every exterior flight of stairs having more than four risers shall have a handrail on one side of the stair; Interior doors: currently improper fit for doors in the door frames, doors need to close securely and be flush with door frames per manufacturer standards; Accumulation of rubbish or garbage; Rubbish storage facilities are inadequate; Owner required to supply covered containers for rubbish on the premises; Refrigerators: refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises – there are numerous refrigerators being used as a planters; Extermination: pest control and extermination required by owner before leasing or renting – evidence of roaches; Plumbing disconnected under sinks throughout premises - all plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system; every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstruction; Electrical appliances, and electrical outlets are not working - owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements; Air Conditioning units that have heat are deteriorated and in poor condition - dwelling shall be provided with heating facilities capable of maintaining a room temperature of 68 degrees; Cooking appliances and water heating appliances shall be properly installed and maintained; All electrical equipment, wiring and appliances shall be properly installed and maintained; Missing and broken luminary fixtures: - every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room shall contain at least one electrical luminaries; Smoke alarms: single or multiple station smoke alarms shall be installed and maintained; Property owner and tenant shall be jointly and severally responsible for maintenance of all required landscape, irrigation and hardscape improvements as originally approved on your site plan - First Notified – 3/1/2013.

Respondent was not present.

Mr. Jackson presented the case history, violations and lack of progress of the Respondent. Mr. Jackson stated no satisfactory progress has been made and the City was requesting the imposition of a fine of \$500.00 per day effective August 8, 2013 with a maximum of \$25,000.00. Mr. Jackson stated the most significant change the occurred on the property was on August 9, 2013 when the ceiling in one of the

units collapsed on a handicapped person inside. Mr. Jackson stated the only type of work that has been done is touch ups or patch work, no actual repairs. Mr. Jackson called Inspector Lankford to testify.

Ms. Lankford stated the only type of work that has been done is patch work jobs or cover ups or band-aids. Ms. Lankford stated for example with cracked soffit they use putty to cover it instead of replacing it. Ms. Lankford stated when there is water stain they paint over it instead of fixing the leak in the roof. Ms. Lankford stated everything that has been done has been minor and also that the smoke alarms are not operating. Ms. Lankford stated the property was occupied.

Ruling

Mr. Vukelja imposed a fine of \$500 per day effective August 8, 2013 to continue each day thereafter until compliance is achieved or reached the maximum of \$25,000.00.

CASE NO 4 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 in compliance August 5, 2013.

CASE NO 5 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 in compliance August 5, 2013.

CASE NO 6 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 stated the case was in non-compliance and recommended a fine of \$75.00 per day with a maximum of \$10,000.

Mr. Stenson stated the junk vehicles have been removed but the broken windows and dilapidated roof still exist.

Ruling

Mr. Vukelja imposed a fine of \$75.00 per day effective August 8, 2013 to continue each day thereafter until compliance is achieved or reached the maximum of \$25,000.00.

CASE NO 7 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 Neland came forward and was sworn.

Mr. Jackson presented the case on behalf of the City and stated the case was on the Agenda for the determination of a compliance date. Mr. Jackson stated the City believed 60 days would be enough time to correct the violations.

Mr. Neland stated he was hoping to get an extension to the time allowed on his building permit which his 180 days. Mr. Neland stated he is doing his best to correct everything.

Mr. Jackson stated the City would be willing to extend a maximum of 90 days for compliance not 180 days.

Ruling

Mr. Vukelja continued the case until October 8, 2013 for determination of a compliance date.

CASE NO 8 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.

Respondent was in compliance August 6, 2013.

CASE NO 9 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.

Respondent was in compliance August 12, 2013.

CASE NO 10 SMG 08-13-42 – Mark Petrane is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC 105.1), at **33 N. Peninsula Drive** - Violation(s) – Working without demo, building, plumbing and electrical permits - First Notified – 2/21/2013.

Mr. Mark Petrane came forward and was sworn. Mr. Petrane stated the contractor he was using was supposed to pull the permits but it turned out the contractor was not credible.

Mr. Jackson presented the case on behalf of the City and stated the violations were working without demo, building, plumbing and electrical permits. Mr. Jackson called Inspector Daniel Garcia to testify.

Mr. Garcia stated at the time of the complaint the only permit pulled was for removal of siding but then the work became excessive and extensive remodeling was being done. Mr. Garcia stated there was a demo permit pulled but it has expired. Mr. Garcia stated there have been transient and police issues at the property. Mr. Garcia stated the City was requesting the building permits be acquired and work to be completed.

Ruling

Mr. Vukelja ordered the Respondent obtain permits within 30 days or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day and further the case be placed on the October 8, 2013 Agenda for the determination of a compliance date.

CASE NO 11 SMG 07-13-41 – Michael & Mary Lou Sayles is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 5.3; Ch. 90-297 City Code, at **422 Old Trail Road** - Violation(s) – Non-conforming use of short term rentals; No occupational license for rental - First Notified – 4/2/2013.

Respondent was not present.

Mr. Fitzgerald stated the Respondents did send in a letter as they reside out of state.

Mr. Jackson presented the case on behalf of the City and stated the violations were for non-conforming use by short-term rentals and also no occupational license. Mr. Jackson stated the City would be requesting an order finding non-compliance and subsequently in compliance.

Mr. Fitzgerald stated they did get an occupational license and also sent in an affidavit stating they would only rent the property on an annual basis. Mr. Fitzgerald stated there was an advertisement online showing weekly rentals but the Respondent advised he changed it to say annually rentals.

Ms. Amanda Jones with Ocean Dunes Neighborhood Association came forward and was sworn. Ms. Jones stated the property was rented about a month ago with different people at the property. The advertisement online shows the property rented weekly and there is a calendar that shows when the property was rented. Ms. Jones stated the advertisement said a minimum of 3 nights booking.

Mr. Jackson stated the Inspector advised him his understanding from the owner is that he does not know how to modify the website.

Mr. Fitzgerald stated the Respondent signed the affidavit saying he would not rent by the week which is what he asked.

Ms. Jones showed the website to the Magistrate on her tablet.

Ms. Karen Ricks came forward and was sworn. Mr. Ricks stated she lives directly behind the house and stated she has marked on her calendar the weeks the property has been rented.

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 12 SMG 08-13-50 – Joseph L. Owen 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 **144 Taylor Avenue** - Violation(s) – Peeling, missing, fading paint and rotten wood or material on house and on exterior structure - First Notified – 5/13/2013.

Mr. Joseph Owen came forward and was sworn. Mr. Owen stipulated to the violations.

Mr. Fitzgerald stated the property should be in compliance by the next cut-off date.

Mr. Owen asked for additional time to come into compliance.

Ruling

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

CASE NO 13 SMG 08-13-43 – Richard L. & Mary Sue Kerlin is cited for failure to correct violations of the Land Development Code, Art. 17 Sec. 2.189 (A)(2), at **2920 N. Peninsula Drive** - Violation(s) – Parking of vehicle over 10,000 gvw (Recreational Vehicle) - First Notified – 5/22/2013.

Mr. Richard L. Kerlin and Mary Sue Kerlin came forward and were sworn. Mr. Kerlin stipulated to the violations.

Mr. Clig stated the City would request compliance by the next cut-off.

Mr. Kerlin stated they have attorney Christine Ertl who is helping them apply for a variance and requested 45-60 days for time to prepare the application.

Mr. Jackson stated he spoke with Ms. Ertl about the violations and because the violations are Article 17 violations there was no variance available and he was not sure if Ms. Ertl had a chance to relay that information to their cline.

Mr. Vukelja inquired if Mr. & Mrs. Kerlin were asking for more time to pursue any remedies available in order for them to try and keep the vehicle on their property.

Ruling

Mr. Vukelja found the property in non-compliance and continued the determination of a compliance date until the September 10, 2013 meeting.

CASE NO 15 SMG 08-13-45 – Harbourside Sunsets Condominium Association, Inc. is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. NFPA 72), at **900 S. Peninsula Avenue** - Violation(s) – Fire alarm system turned off; Breaker for fire alarm system removed - First Notified – Will Fine Order entered 12/12/2012.

Ms. Isabel Valencia came forward and was sworn. Ms. Valencia stated she was the property manager for the Condominium association. Ms. Valencia stipulated to the violations.

Mr. Jackson stated the case was before the Special Magistrate for a repeat violation. Mr. Jackson called Mr. Newell to testify to the history of the case.

Mr. Newell described the property and history of the fire alarm system's non-compliance. Mr. Newell stated the fire alarm system was being tampered with by tenants and there have been 3 instances the fire department has been back to the property where the fire alarm system was shut down. Mr. Newell stated the City was requesting a \$3,000 fine for the repeat violations. Mr. Newell stated a remedy would be to have a wall built and have the fire alarm system moved into an enclosed locked room where the fire department would have a key. Mr. Newell stated if they did make the corrections he would be agreeable to a reduction to \$1,000.00 fine.

Ms. Valencia stated there are new members of the Association and they were not aware of the previous issues. Ms. Valencia stated she has complied with Mr. Newell's requests and she has tried to keep everything under control as much as possible. Ms. Valencia stated she has obtained estimates for the wall to be built and to have the panels moved. Ms. Valencia stated she would think 30 days to make the corrections would be sufficient. Ms. Valencia stated they were not renewing contracts with the tenants they believe were tampering with the system.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered per stipulation of the Respondent to relocate the fire alarm control panel system and snak panel into an enclosed secure room by September 10, 2013 with or be returned to a subsequent meeting for consideration of a fine up to \$5,000 per occurrence.

CASE NO 16 SMG 08-13-46 – Ocean Walk Shoppes, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp NFPA 25), at **250 N. Atlantic Avenue** - Violation(s) – Correct deficiencies from your April 4, 2013 Sprinkler Contractor Report - First Notified – 5/3/2013.

Respondent was in compliance August 1, 2013.

CASE NO 17 SMG 08-13-47 – JNC Solomon Enterprises, Inc. d/b/a A1A Market & Deli and JUNDI Group, LLC d/b/a DB Market is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp NFPA 96, 11.2.1, 101, 7.1.10.1, 1, 11.1.5), at **645 N. Atlantic Avenue** - Violation(s) – Provide inspection paperwork for kitchen hood systems; Nozzles for hood suppression system are not aligned with cooking equipment; Means of egress shall be continuously free of all obstruction or impediments: North entrance pad locked and ice machine is blocking the exit on the north side; Remove extension cords and multi-plug adapters for permanent wiring used for the cooler at the north exit and ice cream cooler - First Notified – 5/7/2013.

Mr. Ashraf Jundi came forward and was sworn. Mr. Jundi stated he was the new business occupying the property and stipulated to the violations.

Mr. Jackson presented the case on behalf of the City and asked to amend the case style to reflect the new business.

Mr. Newell stated the property should be able to come into compliance by the next cut-off date.

Mr. Jundi agreed he could be in compliance by September 4, 2013.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent 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. It was further ordered to add Jundi Group, LLC as a Respondent.

CASE NO 18 SMG 08-13-48 – Marston 46, LLC is cited for failure to correct violations of the City Ordinance Ch. 90 Sec. 90-310 (1); Land Development Code Art. 19 Sec. 1.1 (Ref. FBC Supp NFPA 1, 4.5.8.4, 101, 30.3.6.3, 13.2.2.2.3, 7.1.8, 31.5.4.1, 6.9, 31.5.4.1, 9.6.3.4, 31.4.4.2 and FAC 69A-48), at **732 N. Halifax Avenue** - Violation(s) – Every business shall post and maintain their license upon the licensed premises in a place where it may be seen at all times; Fire alarm system has not been certified or inspected in the past 12 months; Stairwell doors must be self closing and self latching; Panic hardware on stairwell doors not self latching; handrail in the north stairwell is missing and one in south stairwell does not meet code; Fire alarm must send signal to a monitoring company; Fire alarm must have visual and audio devices that have a positive alarm sequence; Smoke detectors required in the common areas on each floor; Fire alarm pull station boxes are on a recall- must contact alarm contractor - First Notified – 4/11/2013.

Respondent was not present.

Mr. Jackson stated the property was in non-compliance and recommended the next cut-off date for compliance.

Mr. Newell stated the violations consisted of no license, no fire alarm inspected or monitored as required, panic hardware not self-latching and missing handrails. Mr. Newell described the remaining violations.

Ruling

Mr. Vukelja found the Respondent in non-compliance and order the Respondent 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 19 SMG 08-13-49 – Ian Ramsbottom Revokable Trust is cited for failure to correct violations of City Ordinance Ch. 90 Sec. 90-310 (1), at **508 Lenox Avenue** - Violation(s) – Every business shall post and maintain their license upon the licensed premises in a place where it may be seen at all times - First Notified – 3/22/2013.

Respondent was not present.

Mr. Newell stated all the violations have been corrected except the City business license. Mr. Newell stated he has spoken with the owner and they are aware they need the license.

Ruling

Mr. Vukelja found the Respondent in non-compliance and order the Respondent come into compliance by September 4, 2013 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

Miscellaneous Business

1. Mr. Jackson stated the staff would be phasing out the term "will fine" and moving to requesting an order of non-compliance and finding of compliance to trigger the repeat violation as stated in Florida Statutes.

Adjournment: The meeting was adjourned at 10:55 a.m.