

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

**October 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
Mr. Hector Garcia, Code Compliance Manager
Officer Sheri Siracusa
Mr. Daniel Garcia, Code Inspector
Mr. Michael Fitzgerald, 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 September 10, 2013 Regular Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton stated there were no announcements.

Ms. Hampton swore in the members of staff who would be testifying.

Mr. Vukelja stated he received some ex-parte communication from Tracey Remark regarding a property not listed on the Agenda and turned the correspondence over to the Board Secretary.

CASE NO 1 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 he tried to pull permits but was unable to. Mr. Petrane stated his intent was to demolish the rear structure and repair the front structure. Mr. Petrane stated he was working with a general contractor to create plans for rebuilding the front house but wanted to keep the front house on the property during the time the plans were being generated. Mr. Petrane stated the rear property was being remodeled but he has since decided to demolish the building because he had to fire the contractor. Mr. Petrane stated he had someone living in the front structure to keep the house from getting broken into. Mr. Petrane stated if he had to he would demolish the back structure by November 6, 2013.

Mr. Jackson asked to discuss the case with staff. Mr. Jackson stated the City would like a time frame of one week for the Respondent to pull the permit and compliance by the next cut-off.

Mr. Garcia stated originally they needed electrical, building and plumbing permits for remodeling the interior and exterior but now the Respondent has decided to demolish so now they need a permit for demolition. Mr. Garcia stated the front building needs a permit for the windows and exterior that was replaced.

Mr. Vukelja inquired how long to obtain a permit for the front and demolish the back structure.

Mr. Garcia stated the permit for the front and demolishing should be by the next cut-off.

Ruling

Mr. Vukelja amended the previous order of non-compliance to require the Respondent obtain permits for the repairs to the front building and further demolish the back structure by November 6, 2013; failing either requirement the Respondent shall be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day. It was further ordered the case be placed on the November 12, 2013 Agenda for progress report regarding overall compliance.

CASE NO 2 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. K. Randall Neland came forward and was sworn.

Mr. Jackson presented the case history, violations and information on behalf of the City. Mr. Jackson stated the Respondent should be in compliance by next cut-off.

Mr. Neland stated he thought the compliance date was for 90 days and not 60 days and he did not realize he was only given 60 days. Mr. Neland stated he had a severe stroke a month previously which has set him back some. Mr. Neland stated the exterior of the property was coming along.

Mr. Stenson stated the entire interior of the house needed plumbing and electrical and there is no drywall. Mr. Stenson stated with diligent effort the repairs could be done in 30 days.

Mr. Jackson stated Code Administration stated 60 days should be sufficient amount of time to bring the electrical and plumbing into compliance.

Mr. Jackson stated the City had a neighborhood witness who would like to be heard.

Ms. Cynthia Cassavant stated she has lived across the street for the past 10 years. Ms. Cassavant stated there have been transients and prostitutes at the property and they have called the police there many, many times. Ms. Cassavant further stated it is not being maintained and it is not secured.

Mr. Vukelja asked what would be completed in 30 days.

Mr. Neland stated the outside he could have completed in 30 days.

Ruling

Mr. Vukelja amended the previous order of non-compliance to order the Respondent come into compliance with the exterior of the property including but not limited to windows, decks, screens, roof, exterior surfaces, structural members, exterior doors, general exterior structure, property is to be maintained and secured or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day and further order the Respondent be in compliance with plumbing, electrical and interior by December 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 3 SMG 09-13-53 – Mayan Ocean Waters, 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, 304.1, 304.10, 304.15, 304.2, 304.4, 304.5, 304.6, and 403.5), at **103 S. Ocean Avenue** - Violation(s) – Structural deficiencies - structural members, exterior walls, foundation walls, balconies, doors, driveway and walkway; peeling paint; clothes dryer exhaust - First Notified – 7/10/2013.

Mr. Michael Yebba came forward and was sworn.

Mr. Don Zeigler came forward and was sworn.

Mr. Vukelja reviewed the action of the last meeting and inquired if the structural engineers report has been provided to the City.

Mr. Zeigler stated it was late yesterday evening when they emailed the Engineering Report to Mr. Garrett with a schedule of completion for the entire project and also included pictures of some of the progress that has been done so far.

Mr. Jackson stated staff was working on trying to get the building official up to the meeting. Mr. Jackson stated it was his understanding the engineer's report has been provided to the City as of the night before but did not know staff's perspective regarding the timeline and whether they were in agreement

Mr. Yebba explained the process of concrete spaulding and how it is repaired.

Mr. Zeigler advised Mr. Vukelja of the progress and also there were 40 rooms not being used right now that were having balcony work done.

Mr. Jackson asked to post pone this case until the chief building official could appear in 15 minutes.

***The case was postponed until later in the meeting.**

CASE NO 4 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. Matt Larson appeared on behalf of the Respondent forward and was sworn. Mr. Larson stated he was Mr. Owen's neighbor who complained several times about Mr. Owen but was appearing on his behalf today. Mr. Larson stated there were several homeless individuals that congregated to the property and there was a growing homeless issue in Daytona Beach. Mr. Larson stated Mr. Owen has moved to Oklahoma and provided him with a limited power attorney to be able to sell the house and list the house as a trespass arrest site.

Mr. Jackson stated the property is still in non-compliance and recommended a fine of \$250.00 per day with a maximum of \$10,000.

Ruling

Mr. Vukelja imposed a fine of \$250.00 per day against the Respondent effective October 2, 2013 to continue each day until compliance is achieved or reached the maximum amount of \$10,000.00.

CASE NO 5 SMG 10-13-54 – Joseph L. Owen is cited for failure to correct violations of City Ordinance Chapter 42 Section 42-214(a)(1) & (2), at **144 Taylor Avenue** - Violation(s) – Noise Complaint - First Notified – 7/26/2013.

Mr. Matt Larson appeared on behalf of the Respondent and was previously sworn.

Mr. Jackson stated this case was noise complaint generated from the congregation of crowds. Mr. Jackson asked for a finding of non-compliance and now in compliance.

Mr. Jackson called Officer Siracusa to testify.

Officer Siracusa stated the noise was created from large crowd gatherings that consisted of transients at his property.

Mr. Larson stated the homeless coalition is enabling criminals by feeding the homeless and turning them loose into the neighborhood.

Ruling

Mr. Vukelja found the Respondent previously in non-compliance and subsequently in compliance as of October 8, 2013 and for any future repeat violation Respondent shall be returned to a subsequent meeting for consideration of a fine up to \$5,000 per occurrence.

****CASE NO 3 SMG 09-13-53 – Mayan Ocean Waters, 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, 304.1, 304.10, 304.15, 304.2, 304.4, 304.5, 304.6, and 403.5), at **103 S. Ocean Avenue** - Violation(s) – Structural deficiencies - structural members, exterior walls, foundation walls, balconies, doors, driveway and walkway; peeling paint; clothes dryer exhaust - First Notified – 7/10/2013.

Mr. Jackson asked for a continuance so staff could have adequate time to review the engineer's report and timeline for compliance.

Mr. Vukelja requested the Respondent's to inform him of what work was being completed at this time and wanted clarification that safety procedures are put in place for the public.

Mr. Yebba assured Mr. Vukelja that safety precautions have been put in place and no one is in any jeopardy regarding safety.

Ruling

Mr. Vukelja continued the case to the November 12, 2013 meeting for the determination of a compliance date.

CASE NO 6 SMG 10-13-55 – Gary F. Zebrowski Estate and U.S. Bank NA as Trustee 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 304.3, 304.13, 304.7, 304.6, 302.7, 302.4, 304.15, 304.2, 302.7, 304.15); City Code Chapter 22 Section 22-27 & Section 22-48, at **620 Cannon Street** - Violation(s) – Outside storage; missing address numbers; broken windows; dilapidated roof; exterior walls; dilapidated fencing; weeds/landscaping; exterior doors; maintenance and security requirements responsibility of mortgagee as required by Code. - First Notified – 8/15/2013.

Respondent was not present.

Mr. Jackson called Mr. Stenson to report about the case.

Mr. Stenson stated the violations and advised the property was vacant and registered with the Vacant Registry because of the foreclosure. Mr. Stenson stated the biggest problem is in the rear of the property where a carport and detached garage have been crushed by trees. Mr. Stenson stated the bank representatives informed him they would be pulling the permits to demolish the structures. The outside storage has been removed.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by November 6, 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 7 SMG 10-13-56 – 448 Martin Luther King Trust dtd 9/17/09 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 304.13, 304.6, 304.7, 304.15, 304.14, 302.7, 504.3); City Code Ch 90-297, at **448 N. Martin Luther King Blvd.** - Violation(s) – Outside storage; broken windows; exterior surfaces; dilapidated roof; exterior doors; torn/missing screens; accessory structure (shed); plumbing system hazard (inadequate service); no rental license - First Notified – 8/8/2013.

Respondent was not present.

Mr. Jackson called Mr. Stenson to provide testimony regarding the case.

Mr. Stenson stated the property was occupied however according to the utility department there is no running water and the condition of the property is deplorable.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by November 6, 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 8 SMG 10-13-57 – 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 – Repeat Violation - Order of Non-compliance entered 7/16/2013.

Respondent was not present.

Mr. Stenson stated the case was for a repeat violation of parking in the yard. Mr. Stenson stated the parking issue has been resolved but there was a day it was parked in the yard. Mr. Stenson asked for the imposition of a fine of \$100.00.

Mr. Vukelja reviewed the picture of the vehicle parking in the grass.

Ruling

Mr. Vukelja found the violation is a repeat violation and imposed a fine of \$100.00 effective October 8, 2013 for the repeat violation.

CASE NO 9 SMG 10-13-58 – John Willard Stephens is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC 105.1), at **1300 Suwannee Road** - Violation(s) – No permit for new driveway - First Notified – 8/15/2013.

Mr. Stephens came forward and was sworn. Mr. Stephens stipulated to the violations and stated he had hired a contractor to do the driveway

Mr. Jackson stated the permit has been applied and it was under review. Mr. Jackson stated it should be in compliance by the next cut-off.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by November 6, 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 10 SMG 10-13-59 – David Partington is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7 & 7.3, at **360 Wilson Avenue** - Violation(s) – Unmaintained landscaping; outside storage - First Notified – 7/26/2013.

Mr. Partington came forward and was sworn. Mr. Partington stipulated to the violations. Mr. Partington stated he believed he could be in compliance by November 6th but needed confirmation about what was left that he needed to take care of.

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

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by November 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

Mr. Vukelja broke the meeting at 10:30 a.m.

Mr. Vukelja reconvened the meeting at 10:35 a.m.

Miscellaneous Business

1. **BIKER DESIGN – 504 MAIN STREET** - Appeal of denial of Biketoberfest® Development Committee and City Commission for participation in Master Plan outside activities for Biketoberfest® 2013 due to Section 1 (a) permanently licensed year-round business. Businesses must be open and operating for a minimum of 250 days, 6 hours per day, during the one-year period immediately preceding the application date.

2. **BIKER DESIGN – 777 MAIN STREET** – Appeal of denial of Biketoberfest® Development Committee and City Commission for participation in Master Plan outside activities for Biketoberfest® 2013 due to Section 1 (a) permanently licensed year-round business. Businesses must be open and operating for a minimum of 250 days, 6 hours per day, during the one-year period immediately preceding the application date.

Attorney Diego Handel presented argument for his client's request for rehearing.

Mr. Ergun "Tom" Recel came forward and was sworn.

Mr. Jackson provided case law to Mr. Vukelja regarding the process of rehearing. Mr. Jackson stated the City has a practice of allowing rehearing's pursuant to Robert's Rules. Mr. Jackson stated the Bike Week Master Plan Appeal proceedings are difficult because of the nature of the cases.

Mr. Vukelja informed Mr. Handel he was inclined to not allow the rehearing based upon the circumstances of the case unless there is some new evidence or something new or a change of circumstances then he would hear that information.

Mr. Handel stated he did have earnings statements and sales receipts for the entire year that was not presented at the time of the hearing. Mr. Handel also stated they received deliveries and an employee was working there almost year round.

Mr. Vukelja inquired why that information was not presented at the appeal.

Mr. Handel stated the information should have been presented but Mr. Recel's health has not been good and perhaps that is why it was not presented. Mr. Handel stated they would be willing to waive the rehearing request for 504 Main Street and asked the City to allow them to participate with 777 Main Street. Mr. Handel believed that would be a fair resolution.

Mr. Jackson provided the scope of the Magistrate's authority stated in the City Code and Chapter 162 Florida Statutes. Mr. Jackson also provided the Resolution appointing the Special Magistrate.

Mr. Vukelja asked the City was their position was regarding Mr. Recel's presentation.

Mr. Handel presented documents for the Magistrate to review.

Mr. Jackson stated he believed that there was not much presented that was new or substantial as the testimony at the last meeting stated there was employees on site but they were located in the back.

Mr. Vukelja stated there are requirements and rules and regulations and his job was to enforce them. and that there was testimony taken under oath that failed to establish the just cause for the Respondent's non-compliance.

Mr. Handel stated his understanding is that the City's position was the business was short approximately 20 days and they would be able to show that they were not short that much and that the 777 Main Street was the primary location of their business and it would be substantial hardship if they were unable to participate.

Ruling

Mr. Vukelja denied the request for rehearing as to both 504 Main Street and 777 Main Street.

Miscellaneous Business

1. Mr. Jackson stated there was an article about code liens they would forward to Mr. Vukelja.

Adjournment: The meeting was adjourned at 11:00 a.m.