

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

January 14, 2014 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. Daniel Garcia, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. Edwin 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 9:05 a.m.

Mr. Vukelja approved the December 10, 2013 Regular Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton announced the following cases in compliance:

CASE NO 13 SMG 12-13-72 – Loland, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.7, 304.13, 305.3, 504.1, 504.3, 605.2, 604.3, 305.3, 605.1, and 308.1); City Code 90-297, at **928 Berkshire** - Violation(s) – Accessory structure (fencing); broken/inoperable windows; dilapidated shed; interior surfaces (garage); plumbing fixtures; inoperable receptacles; electrical system hazard; interior surfaces (inside house); electrical fixtures; infestation; no rental license - First Notified – 10/17/2013.

COMPLIANCE 1/13/2014

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

CASE NO 1 SMG 12-13-75 – Deep Lounge, Inc. and Another Plan B, Inc. d/b/a 509 Supper Club & Lounge is cited for failure to correct violations of the City Ordinance Ch. 42 Section 42-215, at **509 Seabreeze Blvd.** - Violation(s) – Noise Violation - Sound meter reading 85 decibels at 11:46 p.m. Ordinance states 60 decibels for a commercial property from the hours of 10:00 p.m. to 7:00 a.m. - First Notified – 5/28/2013.

Respondent was not present.

Mr. Jackson presented the case on behalf of the City and reviewed the case matter. Mr. Jackson stated he has not heard from Mr. Hood and this case was continued from last month's meeting at his request to this month's meeting. Mr. Jackson further stated the City was ready to proceed.

Mr. Jackson called Officer Siracusa for testimony.

Officer Siracusa stated the violations consisted of loud music being over the decibels allowed for the time frames permitted in the code.

Steve Barnes came forward and was sworn. Mr. Barnes stated he was a resident of the area and has heard the music being loud and it's been going on for a while now.

Anita Gallentine came forward and was sworn. Ms. Gallentine stated she has lived in the neighborhood for almost 20 years and she lives a few blocks from Seabreeze and the loud noise has been going on since May and the issue still has not been resolved.

Wayne Morin came forward and was sworn. Mr. Morin stated he was right in the heart of where 509 Lounge is and the loud music is causing him medical issues for from sleep deprivation and stress. Mr. Morin further stated he was on anti-depressant medications and is losing his mind from all the noise. Mr. Morin did say the past couple of nights he has actually gotten some sleep. Mr. Morin stated he had audio and video tape footage he wanted to submit.

Capt. James Newcomb came forward and was sworn. Capt. Newcomb stated the club has been a continuous problem and they have not been willing to work with the Police Department. Capt. Newcomb advised there are other law enforcement issues there as well.

John Nicholson came forward and was sworn. Mr. Nicholson stated he was concerned about the businesses on Seabreeze that were supposed to be restaurants and they were required to serve food and not just primarily alcohol.

Ruling

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

CASE NO 2 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 had not demolished the building yet as his contractor was busy during the month of December 2013. Mr. Petrane stated he hired a new contractor now and they were out there working on it now and it should be completed by Friday.

Mr. Jackson stated this case has been going on for a while the status of the property has not progressed and therefore the City recommended imposing a fine of \$150 per day.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance by January 24, 2014 or an automatic fine of \$150.00 per day will be imposed effective January 24, 2014 until compliance is achieved or reached the maximum amount of \$15,000.00.

CASE NO 3 SMG 11-13-60 – M N M S Holdings, LLC is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 5.16 (c); Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13 and 307.1); Further reference to Chapter 22 Section 22-27 and 22-27(a)3;, at **123 S. Coates** - Violation(s) – Structure damage by fire, broken windows, trash & debris; repair or demolish - First Notified – 7/24/2013.

Respondent was not present.

Mr. Jackson presented the case information and stated there has been no contact with the Respondent since his initial correspondence and the property is still in non-compliance. Mr. Jackson further stated the City requested a fine be imposed of \$100.00 per day with a maximum of \$15,000.00.

Ruling

Mr. Vukelja imposed a fine of \$100.00 per day effective January 8, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$15,000.00.

CASE NO 4 SMG 12-13-67 – January Kearse is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13.2 and 307.1), at **528 Cedar Street** - Violation(s) – Openable windows - every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware; accumulation of rubbish or garbage - First Notified – 10/9/2013.

Respondent was not present.

Mr. Jackson presented the case on behalf of the City and stated the property remained in non-compliance and the City requested a fine be imposed of \$100.00 per day with a maximum of \$15,000.00.

Ruling

Mr. Vukelja imposed a fine of \$100.00 per day effective January 8, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$15,000.00.

CASE NO 5 SMG 12-13-68 – Janie B. Hill Adams is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13, 304.13.2, 304.15, 504.1, 602.3, 603.1, 704.2); City Ordinance 90-297(a), at **424 Jefferson Street** - Violation(s) – Window and door frames; Exterior doors; Plumbing fixtures; heat supply; mechanical appliances; smoke alarms; no rental license - First Notified – 10/22/2013.

Respondent was not present.

Mr. Jackson reviewed the case history and further stated the Inspector has been contacted by the daughter of Janie Adams who is deceased and the daughter is supposed to be working on bringing the property into compliance.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance by February 5, 2014 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved or reached the maximum of \$15,000.00, plus the one-time administrative fine of \$250.00.

CASE NO 6 SMG 09-13-52 – Theodora E. Keeling is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.7), at **1030 Alice Drive** - Violation(s) – Dilapidated roof - First Notified – 6/28/2013.

Mr. Leon Keeling came forward and was sworn.

Mr. Vukelja reviewed the case history and inquired as to the status of compliance.

Mr. Keeling stated his mother passed away and he was waiting on the determination of the estate before he could make the repairs.

Mr. Jackson presented the case on behalf of the City and stated the pool was treated and in compliance but it has fallen back out of the compliance.

Mr. Stenson stated the violations were the pool being unsecured and dirty, broken windows and the roof. Mr. Stenson stated initially he fixed the pool and the broken windows but the pool has now reverted back to being dirty.

Mr. Keeling stated he has to turn the water and electricity turned back on and was attempting to get things straightened out with the house and his mother's Will.

Mr. Vukelja stated he understood title issues and estate issues but the dirty pool was an immediate issue that needed to be addressed.

Mr. Keeling asked for the middle of next month to bring the case into compliance.

Mr. Jackson asked if Mr. Keeling would stipulate to the inclusion of the pool as part of the Notice of Violation.

Mr. Keeling stated he would agree to add the pool as part of the stipulation.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance within 7 days with the pool or be returned to a subsequent meeting for consideration of a fine up to \$1,000.00 per day and further come into compliance with the roof by March 5, 2014 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day. It was further ordered the property not be rented, leased or occupied (other than Mr. Keeling) until the property is in compliance and the pool needs to be locked and secured.

CASE NO 7 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.

Attorney Jason Ruggerio appeared on behalf of U.S. Bank. Mr. Ruggerio stated the foreclosure complaints were served upon the heirs and the filing attorney should be following through with Summary Judgment and finalizing the foreclosure. Mr. Ruggerio stated they did have a property maintenance company who was maintaining the grounds of the property bi-weekly but they could not make any repairs to the structure or interior until the foreclosure was final.

Mr. Jackson presented the case on behalf of the City and stated the property was still pending in foreclosure and see it is making progress regarding the foreclosure. Mr. Jackson stated the City was agreeable to April cut-off as the bank was working with the City and it sounded like the Bank was not expected to obtain title until March 2014.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance by April 2, 2014 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 11-13-64 – Robert Murphy Sr., Sean G. Murphy, Yvonne Robinson and Robert L. Murphy, Jr. as JTRS is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.7), at **626 Cannon Street** - Violation(s) – Dilapidated roof
First Notified – 8/6/2013.

Respondent was in compliance January 6, 2014.

CASE NO 9 SMG 11-13-65 – Helen Soard is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.6), at **228 Dahoon Holly Drive** - Violation(s) – Exterior Walls (falling stucco) - First Notified – 8/8/2013.

Respondent was not present.

Mr. Jackson reviewed the case history and advised it was falling stucco and the homeowner advised she was elderly and did not have the means to correct the stucco.

Ruling

Mr. Vukelja imposed a fine of \$50.00 per day effective January 8, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$10,000.00.

CASE NO 10 SMG 11-13-66 – Hunter Verbal Truth is cited for failure to correct violations of the Land Development Code, Art. 19. Sec. 1.1 (Ref. FBC Supp IPMC - as listed on the Housing Inspection Form attached), at **815 Julia Street** - Violation(s) – See Attached Housing Inspection Form - First Notified – 8/27/2013.

Respondent was not present.

Mr. Jackson stated the property was complaint driven and was a police issue and they City was requesting a fine be imposed at this point. Mr. Jackson called Inspector Stenson for testimony.

Mr. Stenson stated there were previously transients in the house and the grass was overgrown. The house is now vacant and the grass was being maintained by a friend of the family. Mr. Stenson stated the house needed to be repaired or demolished. Mr. Stenson requested a fine be imposed of \$75.00 per day.

Ruling

Mr. Vukelja imposed a fine of \$75.00 per day effective January 8, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$10,000.00.

CASE NO 11 SMG 12-13-69 – Cathy E. Smith 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 302.7 and 302.8), at **533 Arthur Avenue** - Violation(s) – Outside storage; Accessory Structure (fencing); Junk vehicles - First Notified – 9/7/2013.

Respondent was not present.

Mr. Jackson stated the violation was complaint driven and advised the junk vehicles have been removed but the fence still remained. Mr. Jackson stated the City was asking for a fine of \$100.00 per day.

Ruling

Mr. Vukelja imposed a fine of \$100.00 per day effective January 8, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$10,000.00.

CASE NO 12 SMG 12-13-71 – James Cortazar is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 304.6, 302.7, 304.7, 504.1, 605.1, 305.3, and 603.1); Art. 19 Sec. 1.1 (Ref. FBC 105.1), at **1041 Berkshire Road** - Violation(s) – Damaged exterior surfaces; accessory structure (fencing); dilapidated roof; plumbing system and fixtures; electrical wiring; interior surfaces; air conditioner installation; working without permits - First Notified – 9/3/2013.

Respondent was not present.

Mr. Jackson stated the case was there for a progress report and called Inspector Stenson to provide the current status.

Mr. Stenson stated the tenant is still occupying the property until tomorrow when the apartment will be vacated. Mr. Stenson stated once they property is vacated they have lined up a contractor to come in and make the repairs. Mr. Stenson recommended a compliance date of the March cut off.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance March 5, 2014 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved. It was further ordered the property not be rented, occupied or otherwise utilized until compliance is achieved.

CASE NO 14 SMG 12-13-73 – Henry Mitchell 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 302.7, 304.15, 304.13, 302.3, 504.3); City Code 90-297, at **545 Spruce Street** - Violation(s) – Outside storage; accessory structure (fencing); exterior doors; broken/inoperable windows; dilapidated sidewalks; plumbing system hazard (no water services); no rental license - First Notified – 8/6/2013.

Respondent was not present.

Mr. Jackson presented the case information and advised all the violations still exist and the property was occupied and being rented without a license.

Ruling

Mr. Vukelja imposed a fine of \$200.00 per day effective January 8, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$15,000.00 as well as the one-time administrative fine of \$250.00.

CASE NO 15 SMG 01-14-01 – John Nicholson is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 5.3; Art. 19 Sec. 1.1 (Ref. FBC 105.1); Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.1, 302.4, 302.5, 302.7, 304.1, 304.10, 304.11, 304.12, 304.13, 304.13.1, 304.13.2, 304.14, 304.15, 304.18, 304.2, 304.3, 304.4, 304.6, 305.2, 305.3, 307.1, 307.2., at **413 N. Grandview Avenue** - Violation(s) – Non-conforming use – Number of units exceeds allowed amount of 3; No permit for constructing over 3 units and no permit for fence erected; Remove all trash and debris from the exterior of the property; Damaged, broken driveways and sidewalks; maintain landscaping in a reasonable manner, removing all weeds, dead tree trunks and overgrowth. Remove all materials, inside and out that contribute to rodent harborage; Violation 302.7: repair/replace fence to be upright, free of defects or remove completely. (note permits required to replace fence in its entirety; Damaged siding, peeling and fading paint; Stairways, decks and porches to be structurally sound and in good repair; Repair/replace existing chimney and all exposed surfaces to be protected from elements (painted or similar surface treatment; Handrails; Deteriorated window and door frames; Broken glazing (glass) on all windows. Replace plywood at windows with glazing; Repair/replace all windows to easily open and be able to stay open by window hardware; window screens; Exterior surfaces, including but not limited to walls, window and door frames, to be free of decay and protected from the elements; Install approved address numbers; All structural columns to be free of deterioration and capable of supporting imposed load.; Repair all exterior walls to be free of defects, holes, breaks and loose or rotting materials. All exterior walls to be weatherproof; Violation 305.3: Repair, replace, clean all interior surfaces that are not clean

and sanitary, that have mold, peeling or chipped paint or plaster, all surfaces to be in good, clean and sanitary condition; dispose of all rubbish in a clean, sanitary manner and in approved containers; Exterminate property to remove all insect and rodent infestation; Repair/replace all plumbing fixtures and supply lines to be in operable condition, including but not limited to vent pipes and water heaters.; Ensure water heaters in all units are properly installed, vented and safe, free of hazards; Repair, replace water heater so that units have access to hot and cold water; Provide heating facilities to all units; Repair, replace all electrical equipment, to be safe and maintained in a proper manner; Provide and maintain fire safety facilities and equipment, to include fire extinguishers; Provide smoke detectors to all units. Obtain current Business Tax Receipt for rental properties. - First Notified – 11/13/2013.

Mr. Nicholson was previously sworn earlier in the meeting. Mr. Nicholson stipulated to the violations. Mr. Nicholson stated he was traveling back and forth from Miami to Daytona as he was taking care of his elderly mother and further stated he has been in foreclosure for the past five years. Mr. Nicholson stated the fire inspector came and said there were for units there but he has only rented three units back in 1990 or so and a permit was paid for and the City should have records on that.

Mr. Jackson presented the case on behalf of the City and stated he wanted to correct the notice and stated the number of units allowed is two instead of three and Mr. Jackson stated the City was recommending a compliance date of March 2014.

Mr. Jackson stated the unit issues were a zoning issue.

Mr. Vukelja stated his question was what constitutes compliance with regard to the number of units allowed.

Mr. Jackson stated staff would review the zoning again and asked for a continuance until next month as it relates specifically to the number units. Mr. Jackson stated he requested all remaining violations be corrected by March, 2014.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the case be on the February 11, 2014 Agenda for the determination of a compliance date and additionally ordered the property not be rented, occupied (other than by Mr. Nicholson) or otherwise utilized until compliance is achieved.

CASE NO 16 SMG 01-14-07 – John Burch 755, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC 105.1), at **755 Berkshire Road** - Violation(s) – Working without permits (expired) - First Notified – Order of Non-compliance entered 3/13/2012.

Mr. John Burch came forward and was sworn. Mr. Burch stated he did not agree with the violations.

Mr. Jackson reviewed the case history and stated the case was brought before him for a repeat violation of working without a permit.

Mr. Jackson called Inspector Stenson for testimony.

Mr. Stenson reviewed the case history and stated eventually Mr. Burch was able to obtain a permit and now the secondary permit was issued and has expired. Mr. Stenson stated during this time there have been numerous complaints regarding the look of the property, the police issues and there was actually a fire on the property. Mr. Stenson provided photos of the condition of the property.

Mr. Burch stated he did obtain a permit for the work and he signed a Rehabilitation Agreement with the City for 6 months. Mr. Burch stated he applied to have the permit extended and paid the fees and was able to get the permit extended for 6 months. Mr. Burch provided documentation from the City.

Mr. Vukelja reviewed the case information and stated as there was a period of time where the permit expired and therefore Mr. Burch was in non-compliance. Mr. Vukelja further stated since he has obtained an extension of the permit Mr. Burch was currently in compliance.

Mr. Jackson stated the City requested a fine be imposed of \$1,000 for the time period there was non-compliance.

Mr. Burch stated he did not know the permit was expired and as soon as he found out he obtained an extension.

Board Action

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

CASE NO 17 SMG 01-14-02 – Bobbie Jean Robinson 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, 307.1), at **211 Garden Street** Violation(s) – Weeds; Accessory structure shall be maintained and in working condition; - Accumulation of rubbish and garbage - First Notified – 11/12/2013.

COMPLIANCE 1/7/2014

CASE NO 18 SMG 01-14-03 – David A. Campbell & Marjorie Yappow is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 605.1, 704.2, 603.1, 304.3, 305.3, 305.6, and 307.1), at **600 S. Segrave Street** - Violation(s) – Electrical wires; smoke detectors; appliance damage; premises identification; interior surfaces; rubbish and garbage First Notified – 11/13/2013.

COMPLIANCE 1/7/2014

CASE NO 19 SMG 01-14-04 – Landmark Condo Association is cited for failure to correct violations of the Land Development Code, Art 18 Sec. 6, at **404 S. Beach Street** - Violation(s) – Illegal signs First Notified – 10/7/2013.

COMPLIANCE 12/20/2013

CASE NO 20 SMG 01-14-05 – Philip Longo & Ralph Daddio 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 304.14, 304.2, 304.6, 305.3, 307.1, 603.1, 605.1, 704.1); Art. 8 Sec. 2.7(a), at **133 Fairview Avenue** - Violation(s) – **Outside storage; unsecured window screens; junk vehicle; exposed wires; non-working smoke detectors; vehicle parked on lawn/grass; damaged wall and damaged stove; ceiling in Unit 1 peeling paint on exterior door** - First Notified – 2/22/2013.

COMPLIANCE 1/13/2014

CASE NO 21 SMG 01-14-06 – Jack R. Miles 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. 18 Sec. 7.4.4; Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.7; 304.13; 304.13.2; 304.14; 304.15; 304.2; 304.7), at **2004 N. Oleander Avenue** - Violation(s) – Dorm living; outside storage; damaged soffits; fence; exterior door; broken windows; no window screens; peeling paint; damaged roof and ceiling; overgrown grass, trash and debris - First Notified – 8/22/2013.

Respondent was not present.

Mr. Jackson stated the property was in non-compliance and was a police issue. Mr. Jackson stated the City recommended a finding of non-compliance and the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and order the Respondent come into compliance by February 5, 2014 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved or reached the maximum of \$15,000.00.

Miscellaneous Business

1. Mr. Randall Neland came forward and was sworn. Mr. Neland requested a reconsideration of the fine being imposed because he believed he was in compliance but the Inspector still says he is in non-compliance.

Mr. Vukelja told Mr. Neland he would hear a reconsideration hearing a dispute regarding whether Mr. Neland was in compliance if he had a third party inspection or some witness testimony he could present then he would consider it at that time.

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