

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

**April 22, 2014 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida**

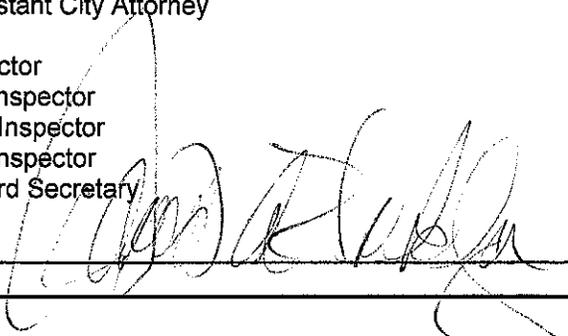
ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Officer Sheri Siracusa
Mr. Tom Clig, Code Inspector
Mr. Daniel Garcia, 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 9:07 a.m.

Mr. Vukelja approved the March 11, 2014 Regular Meeting Minutes.

Ms. Hampton swore in members of staff.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton stated there were no announcements.

Mr. Vukelja announced the following case was resolved:

CASE NO 13 SMG 04-14-26 – Helena W. Montgomery Revocable Trust dtd 12/17/09 is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.7, 304.2, 304.3, 304.7, 304.13, 304.14, 304.15, 305.1, 305.3, 307.1, 504.1, 601.2, 603.1, 605.1, 605.2, 704.2); City Code 90 Sec. 90-297, at **756 Fairmount Road** - Violation(s) – See Premises Inspection Report - accessory structures; protective treatment; premises identification; roofs and drainage; Windows skylight and door frames; insect screens; exterior doors; interior surfaces; accumulation of rubbish or garbage; general plumbing fixtures; mechanical and electrical requirements; mechanical appliances; electrical equipment wiring and appliances; receptacles; smoke detectors; no business tax receipt - First Notified – 11/22/2013.

Attorney Mike Clower appeared on behalf of the Respondent.

Mr. Vukelja announced a stipulation had been reached with regard to the case. Mr. Vukelja stated the Respondent expressed the necessity of needing time for compliance due to tenant issues and they are in litigation at this time.

Inspector Stenson concurred with the stipulation.

Ruling

Mr. Vukelja stated based upon the parties stipulation he found the Respondent in non-compliance ordered the Respondent come into compliance by July 2, 2014 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

Lien Review 1 & 2 were heard simultaneously.

Lien Review 1

SMG 02-13-11 – 986 Orange Avenue – Bakare Organization, LLC was cited for failure to correct violations of Art. 18 Sec. 6.6(a) - Violations: Posting prohibited off-site signs. Order of Non-compliance/Order Imposing Lien and Will Fine Order entered on February 12, 2013. Total amount owed \$8,279.24.

Lien Review 2

CEB 02-14-20 – 986 Orange Avenue – Bakare Organization, LLC was cited for failure to correct violations of Art. 18 Sec. 6.6(a) - Violations: Posting prohibited off-site signs. Order of Non-compliance/Order Imposing Lien and Will Fine Order entered on February 13, 2014. Total amount owed \$8,093.73.

Attorney Bruce Hochstetler appeared on behalf of the Respondent. Mr. Hochstetler explained the issues with the tenant and how they were the violators with regard to the off-site signs. Mr. Hochstetler stated the violations were committed by tenants in violation of the commercial lease and he is also going to be filing an eviction when this case is resolved. Mr. Hochstetler stated his client would agree to make a payment but believed the total owed was excessive and that \$500 per case would be more reasonable with the understanding he was going to do everything he could to remove the tenant.

Mr. Jackson stated the first violation the staff collected approximately over 683 signs at \$10 per sign plus administrative costs to remove the signs out of the community. Mr. Jackson reviewed the circumstances of what occurred at the first and second hearings for the first case. Mr. Jackson stated the second hearing was when the tenant and owner appeared and expressed they would resolve the issue. Mr. Jackson reviewed the circumstances of the second case which resulted from the same activity this tax season as last tax season. Mr. Jackson explained the owner is ultimately responsible to make sure his tenant did not violate the codes. Mr. Jackson stated the City was not in agreement with any reduction of the liens and furthermore did not understand how there has not been one penny paid towards the fine.

Mr. Vukelja reviewed the minutes of the second meeting wherein the code board imposed a fine and Mr. Jackson expressed the City's dissatisfaction with the amount of the fine the code board imposed as it was only slightly higher than what was imposed in the first case and it was a repeat violation.

Mr. Jackson stated that was correct.

Mr. Vukelja asked Mr. Hochstetler if he wanted to come back with an alternative number as he was not agreeable to \$500 per case.

Mr. Hochstetler stated one thing he wanted to point out is that even under the landlord tenant code when a person goes offsite the landlord has no control. He stated the windows and things that happened on the property are under the landlord's control but when they go offsite and place signs over the city he did not know how does the landlord could have control over the tenant. Mr. Hochstetler stated if he was involved earlier in the case he would have removed the tenants earlier.

Mr. Vukelja stated Mr. Hochstetler brought up an interesting point and asked Mr. Jackson to respond.

Mr. Jackson stated the lease agreement was to allow him to operate his business and the way he was advertising and trying to bring people to his business space is related and did not think the issues went as far as to sever it from the landlord. Mr. Jackson stated the space is used for running a business and a part of that is advertising and the tenants were advertising in an unlawful way and manner.

Mr. Hochstetler stated his client would be agreeable to pay \$1,000 for each case.

Mr. Vukelja asked if the Inspector was present that could explain the percentage of signs that were on the premises and signs that were off the premises.

Mr. Jackson stated Mr. Lopez was not present but asked if any other staff members were present because it was the entire staff participation with picking up the signs.

Inspector Daniel Garcia stated he was with Inspector Lopez when they did the site inspection at the property. Mr. Garcia stated there were several signs on the windows and signs on the property and all along Orange Avenue in the right of way. Mr. Garcia stated the snipe signs were all over the City and stated all the inspectors had picked them up including volunteers.

Mr. Vukelja inquired as to how the Respondent came into compliance with the first case.

Mr. Hochstetler stated the signs were picked up.

Mr. Vukelja inquired as to what percentage of signs that were picked up on the property.

Mr. Garcia stated approximately 5 % of the total signs were picked up from the property.

Mr. Jackson called Inspector Lankford and asked if she knew if Mr. Lopez had any communication with the owner.

Inspector Lankford stated she shared an office with Inspector Lopez and knew he spoke with the owner and asked him to please have the tenant stop placing the signs all over the City.

Ruling as to Lien Review 1

Mr. Vukelja ordered the lien be reduced to the amount of \$1,400 subject to being paid within 30 days or the lien reverts back to the original amount.

Ruling as to Lien Review 2

Mr. Vukelja denied the lien review request and the full amount remains.

Hearing of Cases

CASE NO 1 SMG 03-14-14 – Sandra J. Ouderkirk is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.1 and 304.6), at **510 Wisteria Road**
Violation(s) – failure to maintain walls and the exterior - First Notified – 10/11/2013.

Respondent was not present.

Mr. Jackson stated the case was there for a progress report and has compliance date of May 7, 2014. Mr. Jackson stated unless something has changed it appears very little has been completed.

Mr. Clig stated the owner has come down from Chicago and has financial issues and there has been little progress but they are trying to work on it.

CASE NO 2 SMG 10-13-55 – Gary F. Zebrowski Estate & U.S. Bank NA 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.

Mr. Jackson stated the circumstances regarding this case have changed and a foreclosure has been pending but the City now found out that at this stage the foreclosure has been dismissed and now there is a property where the original owner is now deceased and the Bank no longer has a foreclosure.

Discussions were held regarding if the Bank was properly noticed and informed of the violations.

Ms. Hampton stated the Bank was initially cited based upon the City's vacant property registration requirement and the security requirements per that ordinance.

Mr. Stenson stated there has been no change on the property.

Mr. Jackson stated staff was recommending a fine be imposed of \$100 per day with a maximum of \$15,000.

Ruling

Mr. Vukelja imposed a fine of \$100 per day effective April 3, 2014 against the Respondent to continue each day thereafter until compliance is achieved or the fine reaches the amount of \$15,000.

CASE NO 3 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 in compliance April 1, 2014.

CASE NO 4 SMG 03-14-18 – Donald Watson, Donna Watson, Michelle Watson & Michael Watson is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.3, 304.15, 304.13, 304.7, 304.6, 305.3 and 302.7), at **711 Flora Street** - Violation(s) – Missing address numbers; dilapidated exterior doors; broken windows; dilapidated roof; exterior surfaces; interior surfaces; fencing - First Notified – 9/25/2013.

Respondent was not present.

Mr. Jackson stated he heard from Michelle Watson who expressed she was trying to figure things out regarding the property. Mr. Jackson stated the City secured the property and was requesting to amend the compliance date until the June cut-off for compliance.

Mr. Stenson stated Michelle lives up north and is in bad health and the property was from heirs.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until June 4, 2014 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 5 SMG 03-14-20 – Terry L. & Melody A. Hallock is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3; Art. 19 Sec. 1.1 (ref. FBC 105.1), at **1061 Imperial Drive** - Violation(s) – Outside storage; no permit for accessory structure in rear of property - First Notified – 9/13/2013.

Respondent was in compliance April 15, 2014.

CASE NO 6 SMG 03-14-21 – John Michael McKee is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 3.1, 3.2, 3.3(a) and 4.3(b); Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 106.5 and 302.8); Art. 18 Sec. 7.3; and City Code 78-4, at **N. Williamson Blvd. - Vacant Lot Parcel # 5215-00-00-0110** - Violation(s) – No development orders; certificate of occupancy; non-conforming use; all use of land shall comply with applicable federal, state and local laws; outside storage of junk and debris; and littering - First Notified – 2/21/2014.

Respondent was not present.

Mr. Jackson reviewed the history of the case and further stated the Respondent has taken no effort to come into compliance and further stated because of the egregiousness of his actions the City was requesting a fine be imposed of \$250 per day with a maximum of \$15,000.

Ruling

Mr. Vukelja imposed a fine of \$250 per day effective March 18, 2014 to continue each day thereafter until compliance is achieved or the fine reaches the maximum of \$15,000.

CASE NO 7 SMG 03-14-12 – Alain Baruchel is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 5.12; Art. 18 Sec. 5.5(a); Art. 19 Sec. 1.1 (Ref. FBC Supp. IPMC 304.2 and 304.6), at **131 S. Grandview Avenue** - Violation(s) – Unfinished exterior surface: no temporary covering for more than 15 days and construction completed by 60 days; rear and side walls shall be repaired; protective treatment; exterior walls - First Notified – 8/16/2013.

Mr. Alain Baruchel came forward and was sworn.

Mr. Jackson called Inspector Garcia for testimony.

Inspector Garcia stated Mr. Baruchel has hired a contractor who has applied for permits that are now under review. Mr. Garcia stated he has also contacted development services for an approved paint color for the exterior. Mr. Garcia stated the City was recommending the July cut-off for compliance.

Mr. Baruchel stated he would request August for compliance to allow for down time and not counting on the weekends.

Mr. Garcia stated the City was agreeable since he has been held up with all the rain and the permit was still under review.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until August 6, 2014 to come into compliance 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 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, 308.1, 504.1, 504.3, 505.1, 602.1, 602.2, 602.3, 605.1, 701.2, 704.1, 704.2); City Code Ch. 90 Sec. 297 (a) Failure to obtain Business tax receipt for Rental., at **413 N. Grandview Avenue** - Violation(s) – : Non-conforming use – Number of units exceeds allowed amount of 2; No permit for constructing over 2 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. John Nicolson came forward and was sworn.

Mr. Jackson called Inspector Lankford for testimony.

Ms. Lankford stated as far as the interior conversion is concerned, he is down to the correct number of units. Ms. Lankford stated the exterior work is 50% is completed.

Mr. Nicholson stated he believed he was 95% done with the exterior. Mr. Nicholson stated all the trash has been removed and there is a lot of wood that has to be scraped and painted. Mr. Nicholson stated he has removed the trash and debris from the exterior. Mr. Nicholson stated he should be able to be finished by next month.

Mr. Vukelja inquired as to the status of the interior work that still needs a compliance date.

Ms. Lankford stated she has only seen the interior unit where the conversion was completed and has not seen the other units since her first inspection so she does not know what if anything has been done and there have been no permits pulled.

Mr. Nicholson stated since he was not renting the units for approximately 2 or 3 years he did not understand why he had to pull a permit now.

Mr. Vukelja inquired of Mr. Jackson how much time could Mr. Nicholson be permitted to come into compliance as long as he was in agreement not to rent or occupy the units.

Mr. Nicholson stated if he does not rent the units an addendum can be added to the water bill that states before water can be turned back on to the units, the units have to be inspected by the City.

Mr. Jackson stated the City's concern was that because it has not been inspected and no permits have been pulled that they did not know if there were any electrical issues or life safety issues that may be present.

Mr. Jackson stated there was still an outstanding issue regarding the garage apartments being converted without permits.

Mr. Nicholson contested the permit requirements.

Mr. Vukelja stated confirmed with the City that the garage apartments were built without permits.

Ms. Lankford stated yes.

Mr. Nicholson denied the allegation and stated he did pull permits but the City cannot find the permits like they couldn't find the rental license paperwork.

Ms. Lankford stated the permit could be obtained within 30 days and after that they could determine how much time it would take to bring the units into compliance or to make any repairs assuming there are repairs that need to be made.

Mr. Nicholson stated if he obtained a permit he would only have 180 days to fix the property.

Ms. Lankford stated permits are good for 6 months.

Mr. Vukelja asked Ms. Lankford if Mr. Nicholson obtained a permit and everything was approved would the case be concluded with regard to the interior.

Ms. Lankford stated if a permit was obtained and Permits & Licensing inspected and she inspected and everything is in order they would be done with the interior.

Ruling

Mr. Vukelja amended the second amended order of non-compliance to allow the Respondent until June 4, 2014 to come into compliance with regard to all exterior items or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day. It was further ordered the garage apartments not be rented, occupied or otherwise utilized until such time as they are in compliance. The code inspector shall inspect the interior of the garage apartments and Respondent shall submit a permit application and the case shall be placed on the June 10, 2014 Special Magistrate Meeting Agenda for a progress report.

CASE NO 9 SMG 04-14-22 – Robert B. & Rosary Worobec is cited for failure to correct violations of the Land Development Code, Article 17 section 2.111(d) 3 (e)(f), at **1004 Main St.** - Violation(s) – Displaying improper materials on doors and windows - First Notified – 2/20/2014.

Respondent was in compliance April 2, 2014.

CASE NO 10 SMG 04-14-23 – Adel Demetrious is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 5.8 (c), at **325 W. International Speedway Blvd.** - Violation(s) – Dilapidated awning – First Notified – 8/1/2013.

Respondent was in compliance March 26, 2014.

CASE NO 11 SMG 04-14-24 – Joseph F.Pouncey is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC supp IPMC 302.8, 307.1), at **241 South Franklin St.** Violation(s) – Inoperative or unlicensed motor vehicle; accumulation of rubbish or garbage - First Notified – 2/26/2014.

Respondent was in compliance April 1, 2014.

CASE NO 12 SMG 04-14-25 – O'Neal Onthineal Brown is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC 105.1); Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 304.10, 307.1, 305.3, 305.4, 305.6, 505.1, 604.1, 605.1, 704.2, 602.2-401.2); article 1-section 4:3(c); City Code Ch. 90 Sec. 90-297(a), at **323 Maple Street** - Violation(s) – No permit for addition to the home; inadequate light and ventilation; Stairways, decks, porches and balconies; accumulation of rubbish or garbage; exterior walls; interior surfaces including Windows and doors; stairs and walking surfaces; interior doors; plumbing fixture - facilities required; installation of electrical equipment and appliances, smoke alarms; dorm living - First Notified – 1/31/12014 & 2/14/2014.

Mr. Michael Brodus and Marcus McDonald came forward and were sworn. Mr. Brodus stated they were the managing members of the new LLC that purchased the property. Mr. Brodus stated the business name is Target House Property Solutions, LLC.

Mr. Brodus stated they purchased the property on March 11, 2014.

Mr. Jackson asked if they were willing to stipulate to add Target House for O'Neal Brown as a Respondent.

Mr. Bordus stated they would stipulate to be added as a Respondent and stipulated to the violations.

Mr. Jackson stated the City would recommend the June cut-off date for compliance.

Mr. McDonald asked if they could have until August so they could be in compliance with everything that needed to be done.

Mr. Brodus stated also they were misinformed by the previous owner and did not know the extent of the violations and just acquired the property on March 2014.

Mr. Vukelja inquired as to what the City thought about the August cut-off date for compliance.

Ms. Lankford stated some work has been done but not all and believed a July progress report would be good to make sure things were progressing.

Ruling

Mr. Vukelja ordered to join Target House Property Solutions, LLC. as a Respondent.

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by August 6, 2014 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 14 SMG 04-14-27 – Dennis Thomas is cited for failure to correct violations of the Land Development Code, Art. 8 sec. 2.7; City Code Sec. 90-297, at **616 North Street** - Violation(s) – Parking in yard; No business tax receipt - First Notified – 4/24/2013.

Ms. Michelle Thomas came forward and was sworn. Ms. Thomas denied the violations.

Mr. Jackson called Inspector John Stenson for testimony.

Mr. Stenson stated the parking violation has been corrected but there is still no valid business tax receipt but it has been applied for and an inspection has been performed but it failed.

Ms. Thomas stated the parking violation was corrected day one and they did have an inspection for the license and everything passed except she had to order window cranks in order to pass the inspection.

Board Action

Mr. Vukelja found with regard to the parking in the yard the Respondent is in compliance and with regard to the Business Tax Receipt found the Respondent in non-compliance and ordered the Respondent come into compliance by June 4, 2014 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

CASE NO 15 SMG 04-14-28 – ISOSTASY, LLC 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, 304.15, 304.7, 305.3, 605.2, 602.3, 302.5, 308.1, 304.13, 304.14); City Code Sec. 90-297, at **410 Pleasant Street** – Violation(s) – Electrical system hazard; no working smoke detectors; dilapidated exterior doors; dilapidated roof; interior surfaces; Inoperative receptacles; no heat source; rodent harborage; infestation; broken/inoperative windows; missing and/or dilapidated screens; no business tax receipt – First Notified – 2/4/2014.

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

Mr. Jackson called Inspector Stenson regarding the compliance date.

Mr. Stenson stated all the corrections should be able to be completed by the next cut-off date.

Mr. Seppinen stated good progress has been made but some electrical work and roof and flashing work and the porch sagging needed to be completed and asked for the June cut-off date.

Mr. Jackson stated to the City's knowledge no permits have been pulled for the work and they needed to get with the inspector to verify permits have been pulled.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by June 4, 2014 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 10:45 a.m.