

CITY OF DAYTONA BEACH MINUTES

**SPECIAL
MAGISTRATE
HEARING**

**NOVEMBER 10, 2015 at 9:30 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 Supervisor
Officer Aaron Paro
Mr. Jurgen Betz, Housing Inspector
Mr. Tom Clig, Code Inspector
Mr. Fitzgerald, Code Inspector
Mr. Cliff Recanzone, 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 October 13, 2015 Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton stated the following cases were in compliance:

CASE NO 5 SMG 10-15-41 – Eva M. Wright & Michael C. Wright is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 301.3); Art. 6 Sec. 6.2.H & 6.2.H.7.a, at **115 S. Martin Luther King Blvd.** - Violation(s) – Parking vehicles on the grass; parking inoperable/unregistered vehicles on property and failure to maintain parking lot in a safe manner (potholes) - First Notified – 6/30/2015.

Respondent was in compliance November 9, 2015.

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

CASE NO 1 SMG 10-15-44 aka RI2014-0004 – Donald J. Bracy & Carolyn L. Dodge is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A. (Ref. FBC Supp IPMC 304.1, 304.2, 304.13.2, 304.18.1, 604.3, 702.3, 704.2); Art. 8 Sec. 2.5, at **918 N. Halifax Avenue** - Violation(s) – Inadequate off street parking; no dead bolt locks on exterior doors; missing smoke detectors; non-functional windows; rotted entry door at exterior left rear storage room; eliminate large voids around wall mounted window type a/c unit; paint raw wood around window mounted a/c in rear apartment; exposed wiring where smoke detector was removed between kitchen and family room - First Notified – 7/2/2014.

Respondent was not present.

Mr. Jackson stated the case was regarding the rental ordinance and the Inspector reports the property is still in non-compliance but would recommend amending until the next cut-off date and called inspector Betz for testimony.

Mr. Vukelja inquired about photographs that were dated back in May 2014.

Mr. Jurgen Betz stated that was correct the case was initiated in January 2014 with the initial owners and he cited the new owners in July 2014. Mr. Betz stated this owner has been aware since July 2014 and at that time he stated he could have the work completed by February 2015 and since February 2015 he has requested extensions month after month because of several issues. Mr. Betz stated he recently met with a contractor at the property but found out the contractor was not licensed so he could not do the work. Mr. Betz stated the only outstanding issue for the owner is the driveway. Mr. Betz stated he needs to have parking for 4 vehicles but only has parking for one. Mr. Betz stated he has to go through historic review but there is space for a driveway.

Mr. Vukelja stated this would be the last extension he is inclined to grant since the amount of time that has gone by and the fact it does not appear that a variance is necessary.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until December 2, 2015 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 2 SMG 08-15-34 – Tudja & Kaival, LLC is cited for failure to correct violations of the Land Development Code, Art. 9 SEc. 9.2.A. (Ref. FBC Supp IPMC 302.4, 302.7, 304.2, 304.7, 304.10, 304.12, 304.14, 307.1, 308.1, 603.1, 604.3, 605.1, 704.2), at **1100 S. Ridgewood Avenue** - Violation(s) – Smoke alarms; electrical equipment; electrical system hazards; mechanical equipment; extermination; rubbish & garbage; insect screens; handrails & guards; stairways, decks, porches and balconies; roofs and drainage; protective treatment; accessory structures; weeds - First Notified – 6/12/2015.

Mr. Pravin Patel came forward and was sworn.

Mr. Dwayne McDuffie came forward and was sworn. Mr. McDuffie stated he was the contractor for the property.

Mr. Jackson stated the property is in non-compliance and the status is that permits were needed and the incorrect paperwork was submitted so there still is no permit and staff believes there has been inadequate diligence in getting the work done. Mr. Jackson stated since the last meeting they were also found to be nuisance property because of the criminal conduct and staff is requesting a \$500 per day fine to a maximum amount of \$25,000.00. Mr. Jackson also informed Mr. Vukelja there is a previous fine that has not been complied with.

Mr. Recanzone stated he has seen receipts for electrical contractor which failed and also gutters and the infestation.

Mr. Vukelja went through the list of violations with Mr. Recanzone as to what still needed to be completed. Mr. Recanzone everything with the exception of screens, infestation and drainage still needed to be completed.

Mr. Patel stated at the last meeting the Inspector stated he complied 85% and they are having technical issues and applied for October 20th but still have not been issued the permit.

Mr. McDuffie stated he did submit for a permit on the October 8th or 9th and the city has requested a couple of revisions. Mr. McDuffie stated the city needed a more broken down scope of work that needed to be done. Mr. McDuffie stated he believed he should be getting the permit soon.

Mr. Recanzone stated the permit has not been approved yet and he is unsure of the status.

Mr. McDuffie stated they did request additional information from electrical contractor who has had about 4 days to get the information to the City. Mr. McDuffie stated if his electrical contractor does not comply with getting the information in timely he will seek out a new electrical contractor.

Mr. Jackson called Mr. Betz to testify regarding permits.

Mr. Betz stated he is in plan reviews and stated everything has been approved with the exception of information regarding electrical repairs and once that is received he can issue the permit within 2-3 days.

Mr. Vukelja asked Mr. McDuffie how long to bring into compliance once a permit has been obtained.

Mr. McDuffie stated 60 days or less.

Ruling

Mr. Vukelja continued the consideration of imposition of a fine to the December 8, 2015 Agenda.

CASE NO 3 SMG 09-15-38 – Precious Property Management, LLC is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.1.A (Ref. FBC 105.1), at **2735 N. Atlantic Avenue** - Violation(s) – Expired Demolition Permit - First Notified – 8/4/2015.

Ms. Magdalena Cabral came forward and was sworn. Ms. Cabral stated she was the owner's brother and was appearing on his behalf. Mr. Cabral stated they have tried to comply with the requirements of the City. Mr. Cabral stated the architect is preparing the plans.

Mr. Vukelja stated he expected the Respondent to be here along with his architect to show him plans on how he was going to incorporate the sign and the remaining items left on the property and was disappointed they did not show.

Mr. Jackson stated there has been no progress on the property.

Mr. Vukelja inquired as to how much time to remove the concrete and remove the sign.

Ms. Cabral asked if they can have an extension for 90 days to allow them time to work on a loan to start on the property to get everything in place for new construction.

Mr. Jackson stated the city's position is to move forward with the demolition process and to move forward with returning the site to its original state.

Mr. Clig stated in order to keep the sign they will have to do modifications to it and they had to put retention on the property. Mr. Clig stated the dumpster pad, sign and concrete parking lot needs to be removed.

Mr. Cabral stated the last time he was only required to remove the previous name on the sign.

Mr. Vukelja stated this has been going on for a long time and he has given an enormous amount of time and feels he has just been kicking a can down the road.

Ruling

Mr. Vukelja continued the determination of a compliance date to the December 8, 2015 Agenda and expects the Respondent or the Respondent's architect to appear at the meeting.

CASE NO 4 SMG 10-15-39 – Barry Gorin Revocable Living Trust is cited for failure to correct violations of City Code Ch. 90 Sec. 90-297, at **912 Tracy Street** - Violation(s) – No business tax receipt (BTR) - First Notified – 8/6/2015.

Respondent was in compliance October 22, 2015.

CASE NO SMG 10-15-42 – Nivrah Consulting & Investment Group, LLC is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 301.3, 302.4, 304.2, 307.1), at **713 Marion Street** - Violation(s) – Trash and debris throughout the property; overgrown grass/hedges; chipped and faded paint - First Notified – 6/22/2015.

Jim Harvin came forward and was sworn.

Mr. Jackson stated the property is in non-compliance and staff was requesting a fine of \$150 per day to a maximum of \$10,000.

Mr. Harvin stated the overgrown weeds have been taken care of and there is more time needed to take care of the rest of the items on the list. Mr. Harvin stated he should have at least 85% compliance by the next meeting date.

Mr. Sykes stated prior to last month's meeting they did remove some debris from the front yard as well as cut the front yard but they still have trash and debris on the side of the house, a junk vehicle, house needs painted and there is more trash and debris on the porch.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until December 2, 2015 to come into compliance or an automatic fine of \$100 per day will be imposed effective December 3, 2015 and continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$10,000.00.

CASE NO 7 SMG 11-15-48 – Politis Investments, LLC is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A. (Ref. FBC Supp IPMC 302.1, 302.3, 302.7, 304.1, 304.2, 307.1, 307.3, 307.3.1, 604.3, 605.1); Art. 6 Sec. 10.D, 10.G; Art. 6 Sec. 12.D.; Art. 6 Sec. 2.H.4, at **225 N. Atlantic Avenue** - Violation(s) – Exterior surfaces; dirt and grime; trash and debris; sidewalks, driveways, screening of mechanical, compaction, and roll-off containers; broken, loose, missing, or rotting fence parts; exterior accumulation of rubbish or garbage; electrical hazard due to inadequate service; improper fusing; insufficient receptacle/lighting outlets; electrical components not in working order - First Notified – 8/13/2015.

Karen Baker, Regional Director for Burger King who is the tenant, came forward and was sworn. Ms. Baker stated they had the parking lot striped and painted and they are the ones who are working on the corrections.

Mr. Fitzgerald came forward and was sworn. Mr. Fitzgerald stated the property should be in compliance by the next cut-off date.

Ms. Baker stated she has an original list but would like to get an updated list of what remained on the property.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 2, 2015 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 8 SMG 11-15-50 – Robert E. & Joanne R. Daun is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 304.2), at **132 Pierce Avenue** - Violation(s) – Fading & peeling paint - First Notified – 8/7/2015.

Chris Daun came forward and was sworn. Mr. Daun stated he was the son of Robert and Joanne and he lived at the property. Mr. Daun stipulated to non-compliance.

Mr. Jackson stated staff was requesting the next cut-off date for compliance.

Mr. Daun stated he was restoring the house and he stated there is no woodwork around doors or windows and he has hired carpenters but is on his third one. Mr. Daun was hoping for an extension to the January meeting.

Mr. Fitzgerald stated there was no objection to the January meeting.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by January 6, 2016 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 9 SMG 11-15-51 – Kathleen Megan Carter is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 305.3, 605.2,604.3, 305.6, 605.1, 304.15, 704.2) City Code 90 Sec. 90-297, at **1290 9th Street - Unit 304** - Violation(s) – Interior surfaces; inoperable receptacles; electrical system hazard; interior doors; electrical fixtures; exterior front door; missing smoke detectors; no business tax receipt (BTR) for rental property - First Notified – 7/29/2015.

Respondent was not present.

Mr. Jackson stated the property was in non-compliance and staff was recommending the next cut-off date for compliance. Mr. Jackson called Mr. Stenson to testify.

Mr. Stenson stated there has been no contact and no change or permits pulled. Mr. Stenson stated the property is tenant occupied.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 2, 2015 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 10 SMG 11-15-52 – SEGUE2ME, LLC is cited for failure to correct violations of the Land Development Code, Art. 6 Sec. 10.G; Art 8 Sec. 8.2.A.; Art 9 Sec. 9.2.A (Ref. FBC 105.1 & Supp IPMC 605.1, 302.7, 304.6), at **769 Alabama Street** - Violation(s) – Dilapidated signage; non-conforming use; electrical fixtures; dilapidated dumpster enclosure; dilapidated roof; dilapidated exterior walls; interior work done without permits - First Notified – 9/5/2015.

Mr. David Schaeffer came forward and was sworn.

Roland Blossom, Esquire appeared on behalf of the Respondent. Mr. Blossom stated he was contesting the determination of non-compliance. Mr. Blossom stated Mr. Schaeffer purchased the property in January 2014 but the history begins on this property with the former owner back in 2012. Mr. Blossom stated the property was originally used as a restaurant/bar which was grandfathered in. Mr. Blossom stated upon Mr. Schaeffer trying to obtain a permit he was told the non-conforming use was terminated. Mr. Blossom stated they have tried to work with the city but ultimately it was determined by staff the grandfathered use was lost. Mr. Blossom stated they appealed that decision to the Board of Adjustment

who subsequently sided with the City and now there is an appeal pending with the Circuit Court where the issue is still presently pending.

Mr. Blossom stated they have been told no work can be performed on this place until the non-conforming use issue has been resolved. Mr. Blossom stated there is a fence around a dumpster, soffit work and painting that needed to be done but the city will not issue a permit. Mr. Blossom believes the case should be dismissed until all the legal aspects of the case have been resolved.

Mr. Jackson stated there is a lot more to the case than the city realized as far as the legal case is but staff is stating the position of the city is it non-compliance but would like the property into compliance by next cut-off date.

Mr. Stenson stated the non-conforming use is that people were residing in the property. Mr. Stenson stated zoning is saying the grandfathering status was lost to reinstate the bar/nightclub use.

Mr. Jackson stated the city believed it would be best to ask for a continuance of this matter.

Ruling

Mr. Vukelja continued the determination of compliance or non-compliance to the December 8, 2015 meeting.

CASE NO 11 SMG 11-15-53 – Marilyn Carvalho is cited for failure to correct violations of the Land Development Code, Art. 6 Sec. 6.2.H.7.a.i.; Art. 9 Sec. 9.2.A (Ref. FBC 105.1 & Supp IPMC 302.7), at **910 Derbyshire Road** - Violation(s) – Off-street parking; dilapidated fencing; working without permits- First Notified – 9/18/2015.

David Carvalho came forward and was sworn. Mr. Carvalho stated he believed the company who installed the building got the permits and were unaware they did not. Mr. Carvalho stated he tried to pull the permit himself and he needs to get a survey before the city will give him a permit and was therefore asking for a compliance date in January.

Mr. Stenson stated the off-street parking and dilapidated fencing has been repaired and the only thing that remained was a permit that was required for the structure in the rear and the company who was hired did not pull a permit.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by January 6, 2016 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 12 SMG 11-15-54 – Willis McDuffie is cited for failure to correct violations of the Land Development Code, Art. 6 Sec. 6.2.H.7.a.i.; Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 302.7), at **1324 Phillips Street** - Violation(s) – Parking in the yard; accessory structure (tent shelter in front yard) First Notified – 10/3/2015.

Mr. Willis McDuffie came forward and was sworn. Mr. McDuffie stated the tent was up for a few days during bike week. Mr. McDuffie stated he was applying to obtain a permit to put in another driveway but he has to have a survey before they can issue a permit but he does not have the finances right now but was working on it.

Mr. Stenson saying compliance can be achieved by the next cut-off date.

Mr. McDuffie stated he tries not to park it on the side because the neighbors have college kids and someone hit his truck and no one fessed up to it.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by February 3, 2016 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 13 SMG 11-15-55 – Phillip James, Jr. is cited for failure to correct violations of the Land Development Code, Art. 6 Sec. 6.2.H.7.a.i; City Code Ch. 90 Sec. 90-297, at **1328 Phillips Street** - Violation(s) – **Parking in yard; Failure to obtain a business tax receipt (BTR) for rental property** First Notified – 10/3/2015.

Respondent was in compliance October 30, 2015.

CASE NO 14 SMG 11-15-56 – Larry Brown & Abner Brown is cited for failure to correct violations of the Land Development Code, Art. 6 Sec. 6.19.A.3.a.; Art. 6 Sec. 6.2.H.7.a.i; Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 605.1, 504.1, 704.2, 304.6, 305.6, 304.13, 304.7); City Code Ch. 90 Sec. 90-297, at **520 Pleasant Street** - Violation(s) – Outside storage; parking in the yard; electrical fixtures; plumbing fixtures; smoke detectors; exterior surfaces; interior doors; windows; roof; no business tax receipt (BTR) for rental property - First Notified – 7/28/2015.

Mr. Abner Brown came forward and was sworn. Mr. Brown stipulated to non-compliance.

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

Mr. Brown asked for more time as most of the items have occurred from the previous tenant who was a friend he was allowing to stay there it was not his intent for the property to be rental. Mr. Brown stated he is trying to have the tenant removed and because of that he called code enforcement. Mr. Brown stated he is trying to evict him but lost the eviction case because he claimed retaliation for complaining. Mr. Brown stated he believes the only thing he would need an extension on is the roof but everything else he can fix timely as soon as he gets the tenant out. Mr. Brown stated he has not been going to the house because the tenant is confrontational.

Ruling

Mr. Vukelja found the Respondent in non-compliance and continued the determination of a compliance date to the December 8, 2015 meeting.

CASE NO 15 SMG 11-15-57 – Wayne M. Salter, Jr. & Jonkeia N. Salter is cited for failure to correct violations of the Land Development Code, Art. 6 Sec. 6.19.A.3.a.; Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 304.3, 504.1, 304.7, 603.1, 304.13, 304.14, 704.2, 304.15, 305.3, 305.6, 308.1, 302.7, and 605.1,); City Code Ch. 90 Sec. 90-297, at **724 Tomoka Road** - Violation(s) – Outside storage; address numbers; plumbing fixtures (kitchen, sink, toilet); dilapidated roof; inoperable appliances (stove); broken/inoperable windows; missing/illegal screens; missing smoke detectors; dilapidated exterior doors (outside storage room); interior surfaces; interior doors; infestation; dilapidated fencing; electrical fixtures; no valid business tax receipt (BTR) for rental property. - First Notified – 8/28/2015.

Respondent was not present.

Mr. Stenson stated there has been no progress and recommended the next cut-off for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 2, 2015 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

MISCELLANEOUS BUSINESS

CASE NO SMG 06-14-41 – Richard W. & Lilia O. Morgan is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.7, 305.3, and 704.2); City Code Sec. 90-297, at **619 Aberdeen Street** - Violation(s) – Dilapidated roof; interior surfaces; missing smoke detectors; no valid business tax receipt (BTR). **Order Imposing Fine/Lien of one-time administrative fine of \$250.00 imposed August 12, 2014.** BTR obtained and case in compliance on August 28, 2014.

Mr. Jackson stated the staff was requesting a release.

Ms. Hampton stated the business tax receipt was acquired very close to the date of compliance so the city was requesting a release of the lien.

Mr. Garcia introduced Mr. Albelo as the new housing inspector.

Ruling

Mr. Vukelja released the lien.

Adjournment:

The meeting was adjourned at 10:25 a.m.