

CITY OF DAYTONA BEACH MINUTES

SPECIAL MAGISTRATE HEARING

SEPTEMBER 13, 2016 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. Tom Clig, Code Inspector
Mr. Cliff Recanzone, Code Inspector
Mr. Michael Fitzgerald, Code Inspector
Mr. John Stenson, Code Inspector
Ms. Glejuanda Davis, Code Inspector
Ms. Aimee Hampton, Board Secretary
Jason Jeffries, Redevelopment Division
Susette Day, Permits and Licensing
Ofc. Ryan Forrest
Ofc. Tarek Houssamy
Ofc. Ashley Rossi

Approval of Minutes by: _____

Special Magistrate

Mr. Vukelja called the Hearing to order at 9:00 a.m.

Mr. Vukelja approved the August 9, 2016 Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton stated the following case was in compliance:

CASE NO 7 SMG 05-16-29 – Bobby L. Caldwell is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A. (Ref. FBC Supp IPMC 302.7, 304.2, 304.7, 304.13.2, 304.14, 305.1, 305.3, 305.6, 504.1, 603.1, 604.3, 704.2); Art. 8 Sec. 2.B., at **1311 Hillcrest Drive (Main House, Unit 4, Unit 5, and Carport)** - Violation(s) – ***Main house (occupied): Hallway bathroom – diverter not working properly; Wall area under lavatory sink open and exposed.*** Need to patch, seal and repaint all including all pipe intrusions; Hallway closet missing door knob; Missing smoke detectors in bedrooms and hallway; All windows must be easily openable; Missing windows screens throughout the property; Repair and re-paint all damaged or deteriorated fascia and soffits throughout the property; Rear yard wood fence is leaning; Cracked interior wall (living room); All ceiling light fixtures must have lamp covers (shades); Ceiling fans must be correctly installed; Kitchen countertops have damaged, exposed porous surfaces which must be repaired or top replaced; Visual evidence of roach infestation; Junk & trash at West side yard (wood boards, fish tank, containers with stagnant water, etc.); Zoning violation - illegal subdivision of main structure (West side bedroom as a separate apt.) and rear unit divided into two separate units (there is a kitchen in the main structure and a kitchen in apartment identified as #4). Must Obtain all required permits for added apartments or return to original state; The carpet inside the closets have exposed tack strips and are in deplorable state (replace/repair); There are missing HVAC wall vent grills missing; The A.H.U has no filter installed; Kitchen ceiling area shows a crack and needs to be finished/re-painted; The front entry door of the main house is missing the required dead bolt; Addition to

zoning violation – the West side bedroom in the main structure which is rented has no windows; **Unit #4 (S.W. rear - vacant)**: Missing smoke detectors; Visual evidence of roach infestation (under kitchen sink); Ceiling light fixtures damaged (kitchen & living room); Need to seal wall intrusions under bathroom sink; Hall closet missing door knob; Exposed light bulb at bathroom, install shade; Crawl space not secured (area under access stairs); The stove/range needs to be cleaned and serviced; Has a hip roof (unknown pitch) without shingles; Missing tile in bedroom area (repair); Bedroom door frame in need of paint. **Unit #5 (S.E. rear - occupied)**: Smoke detector not functioning in bedroom; Bathroom GFCI protected receptacle has no power; Windows must be easily openable; Missing deadbolt at entry door (South exposure); Possible living area/square footage violation (ck. with Building Dept.). **Carport**: Dryer in carport closet has no venting; Unused refrigerator stored in open carport with door attached. Must be removed.; **Exterior walls/surfaces**: There are multiple cracks and exterior wall damage that will need to be corrected and repainted. Especially areas adjacent to the hose bib at back of carport closet. - First Notified – 2/9/2016.

COMPLIANCE 9/9/2016

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

Lien Review 1

CASE NO SMG 03-09-27 – 152 Kingston Avenue – Nicholas & Donna Seculich (New Owner Kingston Avenue Land Trust dated 12/30/15 c/o John C. Scales, Trustee) failure to correct violations of The Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.7 and 304.2); City Code Ch. 90-297 - Violation(s) – Accessory structure (fencing in disrepair) peeling paint; no occupational license for renting. Order Imposing Fine/Lien of \$250.00 per day effective April 7, 2009. Compliance date:8/18/2016 = \$15,000.00 plus interest of \$22.00 recording costs = \$15,022.00. Payment received as excess proceeds from tax deed - \$2,870.35 = Total owed: \$12,151.65.

Mr. John Scales came forward and was sworn.

Mr. Jackson reviewed the case information and advised the new owner purchased the property at tax deed sale and the city did acquire some of the excess proceeds from the sale and has applied those funds. Mr. Jackson stated an outstanding balance still remained over \$12,000 and the city was recommending a reduction to the amount of \$2,500.

Mr. Scales stated he was happy with the reduction and agreed to the \$2,500.

Ruling

Mr. Vukelja ordered the lien be reduced to the amount of \$2,500 subject to being paid within 30 days or the fine reverts back to the original amount.

Lien Review 2

CASE NO SMG 12-15-68 – 712 Georgia Street – Black Tide USA, LLC was cited for failure to correct violations of The Land Development Code, Art. 9 Sec. 9.2.A. (Ref. FBC Supp IPMC 302.7 and 307.1) - Violation(s) – Accessory structure – shed with no wall; rubbish and garbage throughout the yard. Order Imposing Fine/Lien of \$100.00 per day plus effective March 3, 2016. Compliance date: 3/24/2016 = \$2,100.00 plus interest of \$47.45 and recording costs of \$24.00. Total owed: \$2,171.45.

Mr. Sean Duszney came forward and was sworn. Mr. Duszney stated he hired a general contractor to do the job and the contractor obtained the permit on February 2nd. Mr. Duszney stated he was out of state at the time and was unaware it was not completed in time.

Mr. Jackson stated the permit was finalized on March 24, 2016 and the deadline for compliance was March 3, 2016, therefore the fine ran for 21 days. Mr. Jackson stated staff recommends no reduction as there was numerous neighbor complaints.

Ruling

Mr. Vukelja ordered the lien be reduced to the amount of \$217.14 subject to being paid within 30 days or the fine reverts back to the original amount.

Hearing of Cases

CASE NO 1 SMG 04-16-21 – J & J Bryan Florida, Inc. is cited for failure to correct violations of the Land Development Code, Art. 3 Sec. 3.4.S, at **1901 N. Atlantic Avenue** - Violation(s) – No permit for roof extension - First Notified – 12/18/2015.

Ms. Colleen Miles appeared on behalf of the Respondent came forward and was sworn.

Mr. Jackson stated that the variance was approved by the Board of Adjustment and the only thing left was for the permit to be approved and the property will be in compliance. Mr. Jackson stated staff's recommendation was to amend the compliance date to the next cut-off.

Ms. Miles stated the permit application is submitted and should be approved soon.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until October 5, 2016 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 2 SMG 07-16-38 – Binny Enterprises, 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, 302.4, 302.7, 304.2, 304.3, 304.6, 304.7, 304.8, 304.10, 304.12, 304.13, 304.13.1, 304.13.2); Art. 6 Sec. 6.10.D; Art. 6 Sec. 6.10.E.1, 6.10.E.2, Art. 6 Sec. 6.10.G; Art. 6 Sec. 6.12.C.4; Art. 6 Sec. 6.12.D; Art. 6 Sec. 6.19.A.3.; Art. 6 Sec. 6.19.A.4; Art. Sec. 6.19.B.; Art. 6 Sec. 6.2.H.4; Art. 6 Sec. 6.2.H.4.; Art. 7 Sec. 7.2.N.9, at **509 E. International Speedway Blvd.** - Violation(s) – No permit; outside storage of trash and debris; high grass and weeds; accessory structure dilapidated; peeling and fading paint; missing address numbers; exterior walls have holes and breaks; deteriorated roof; stairways decks and porches have deficiencies; handrails have parts that are missing; Windows and doors are broken or deteriorated; exterior sign – business is not open; Parking lot striping has cracks or missing asphalt; expired permit - First Notified – 3/29/2016.

Ms. Lorie Jordan, property manager, came forward and was sworn.

Mr. Stan Holle, Architect came forward and was sworn.

Mr. Jackson stated the property remained in non-compliance and staff was recommending a fine be imposed of \$450 per day until compliance is achieved with a maximum of \$20,000.

Mr. Fitzgerald stated that the only permit issued for the repairs that were done on the property was for the roof. Mr. Fitzgerald stated the Respondents applied for door replacement permit however that permit was now expired. Mr. Fitzgerald stated that the Respondent's met with TRT staff however no additional communication has been received after that meeting.

Lorie Jordan stated she has an email between the owner and Mr. Fitzgerald which outlined what needed to be done. Mr. Jordan stated the roofing permit was set to be completed this month. Ms. Jordan stated she has been employed as the property manager for 2 weeks and hired Stan Holle to complete the project.

Mr. Holle stated the plan is to redevelop the property as an Indian restaurant. Mr. Holle stated he has been retained to work on the project and he has met with Reed Berger from Redevelopment. Mr. Holle stated they would have to go to the variance board to try and get more parking approval. Mr. Holle stated he has applied for a minor site plan review.

Mr. Reed Berger, Redevelopment Director, came forward and was sworn.

Mr. Vukelja stated he has been provided a site plan and asked Mr. Berger's opinion about the project.

Mr. Berger stated they have been into the office for a pre-conference TRT meeting. Mr. Berger stated they were very impressed with what they were provided as a solution to the property. Mr. Berger stated an application has been submitted for a site plan. Mr. Berger stated they have to act on that and follow through but they were happy with the project.

Mr. Jackson stated that at this point staff would recommend a progress report at the next meeting and that the Respondent should maintain the outside appearance of the property.

Ruling

Mr. Vukelja continued the case to the October 11, 2016 meeting for progress report and further ordered that the property not be utilized were occupied and the exterior shall be maintained.

CASE NO 3 SMG 07-16-39 – Gatlin Brothers of Daytona Beach, 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, 304.3, 304.6, 304.8, 307.1, 307.3, 307.3.1, 504.3, 506.1, 604.3, 702.3, 702.4, 704.1) Art. 3 Sec. 3.4.S.1; Art. 6 Sec. 6.10.D.; Art. 6 Sec. 6.10.E.1; Art. 6 Sec. 6.10.G.; Art. 6 Sec. 6.12.D; Art. 6 Sec. 6.19.B.; Art. 6 Sec. 6.2.C.1; Art. 6 Sec. 6.2.H.4, at **600 North Ridgewood Ave.** - Violation(s) – Sanitation; accumulation of litter, garbage, or waste; sidewalks/driveway cracks-surfaces not maintained, broken areas, uneven slabs, trip hazard, missing or deteriorated striping; accessory structures: fence is loose, leaning or falling; street numbers missing or are not visible from the street; fire safety-means of egress-locked doors; general exterior, peeling flaking paint; exterior finishes should be free from holes or breaks; deterioration; prohibited signs; roof, fascia and soffit deterioration; electrical system: lighting fixtures, switches and outlets not in working order; improper wiring or installation - First Notified – 4/26/2016.

Respondent was not present.

Mr. Jackson stated that the property remained in non-compliance and staff was recommending a fine be imposed of \$400 per day to a maximum of \$20,000.

Mr. Fitzgerald reviewed all of the violations that were completed and the remaining issues that were still outstanding and the violations they tried to remedy but did without a permit. Mr. Fitzgerald stated the efforts of compliance that included fence repairs, they painted some of the exterior however some of the repairs were made without a permit. There also remained a locked door which blocked egress. Mr. Fitzgerald also stated the dumpster should be enclosed.

Board Action

Mr. Vukelja ordered the property come into compliance within 10 days or an automatic fine in the amount of \$400 per day will go into effect September 23, 2016 to continue each day thereafter until compliance is achieved or the fine reaches the maximum amount of \$20,000.

CASE NO 4 SMG 07-16-41 – Daisy Smalls Johnson and George Smalls, Jr. and Vincent E. Smalls, as JTRS is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 304.2, 304.15, 605.1, 305.3, 603.1, 504.1, 304.13, 304.14, 704.2, 605.2); City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **1211 Imperial Dr.** - Violation(s) – Peeling paint; exterior doors; electrical fixtures; electrical wiring; interior surfaces; inoperable appliances; damaged plumbing fixtures; inoperable Windows; missing or damaged screens; missing or inoperable smoke detectors; and operable receptacles; failure to obtain business tax receipt (BTR); failure to obtain required residential rental license (RTL) - First Notified – 5/3/2016.

Respondents were not present.

Mr. Jackson stated the eviction was now complete and they obtained a writ of possession to have the tenant removed. Mr. Jackson stated Mr. Stenson recommends amending the compliance date to the next cut-off date for compliance.

Mr. Stenson stated work has begun on the property and staff was recommending compliance by the next cut-off date.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until October 5, 2016 to come into compliance or be returned to subsequent meeting for consideration of a fine of up to \$1,000 per day thereafter.

CASE NO 5 SMG 08-16-46 – Crystal G. Scott is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A. (Ref. FBC Supp IPMC 602.3, 704.2, 504.1, 304.15, 304.2, 304.13, 305.3, 605.1, 604.3, 504.3, 304.7) City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **544 Berkshire Road** - Violation(s) – No working heat; no smoke detectors; dilapidated plumbing fixtures; dilapidated garage door; damaged exterior door; peeling paint; inoperable windows; damaged interior surfaces; damaged/missing electrical fixtures; electrical system hazards (interior breaker panel); plumbing system hazard (low water pressure); dilapidated roof (fascia); Failure to obtain business tax receipt (BTR); failure to obtain residential rental license (RTL) - First Notified – 5/19/2016.

Ms. Gerry Finley came forward and was sworn.

Mr. Jackson stated good progress was being made and staff was recommending amending the compliance date to the next cut-off date.

Ms. Finley agreed to the next cut-off date for compliance.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent October 5, 2016 to come into compliance or be returned to a subsequent meeting for consideration of a fine of up to \$1,000 per day thereafter.

CASE NO 6 SMG 08-16-47 – Susan Hounsom Family, LTD Partnership is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A. (Ref. FBC Supp IPMC 304.14, 304.2, 605.2, 308.1, 302.5, 704.2, 304.15, 305.6, 504.1, 304.10, 304.6) City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **617 Kingston Avenue** - Violation(s) – Damaged or missing screens; dilapidated handrails; inoperable receptacles; infestation; rodent harborage; missing smoke detectors; damaged exterior doors; damaged interior doors; damaged plumbing fixtures; dilapidated stairs; exterior surfaces; Failure to obtain business tax receipt (BTR); Failure to obtain residential rental license (RTL) - First Notified – 6/1/2016.

Ms. Susan Hounsom came forward and was sworn.

Mr. Peter Ancona came forward and was sworn.

Mr. Jackson stated this case involved a landlord/tenant dispute and the property remained in non-compliance.

Mr. Stenson stated the case was initiated back in May with a tenant complaint. Mr. Stenson stated he was subpoenaed to court as the landlord and tenant are in litigation which means progress has been moving slowly. Mr. Stenson stated he had to issue stop work orders for work that was being performed without the proper permits.

Ms. Hounsom stated she agrees it has been difficult to make progress due to the tenant however some progress has been made.

Mr. Ancona stated he was the handy man and further stated the damaged and missing screens have been replaced, the handrails are in progress as they were waiting on the permit, the receptacles have been repaired, smoke detectors have been replaced, the exterior doors have been repaired but the interior doors are in progress as they are waiting on some hardware, plumbing is repaired, there is a new back porch being installed with a permit, the decks, walkways are repaired. Mr. Acona stated they were approved for a BTR but the Rental License is still pending. Mr. Acuna stated he did believe he could have it done with and it should take 2 weeks for permits, the screens are repaired, the receptacles are repaired, the smoke detectors have been replaced, the exterior door has been repaired but the interior doors are in progress.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until October 5, 2016 to come into compliance or be returned to a subsequent meeting for consideration of a fine of up to \$1,000 per day thereafter.

CASE NO 8 SMG 08-16-49 – William Berner is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 403.2 and 704.2); City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **208 Arlington Avenue** - Violation(s) – Ventilation in the bathrooms and toilet rooms; inoperable smoke alarms; Failure to obtain business tax receipt (BTR); Failure to obtain residential rental license (RTL) - First Notified – 4/8/2016.

Mr. Homer Phillips came forward and was sworn. Mr. Phillips stipulated to being joined as a co-respondent.

Mr. Jackson stated he had no objection to enjoining Mr. Phillips as a Respondent.

Mr. Phillips stated he expects everything to be in compliance before the next cut-off date.

Ruling

Mr. Vukelja found the respondent in non-compliance and ordered the Respondent come into compliance by October 5, 2016 or be returned to a subsequent meeting for consideration of a fine of up to \$1000 per day thereafter.

CASE NO 9 SMG 08-16-50 – AVS Investments, LLC is cited for failure to correct violations of the Land Development Code, Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 304.2, 304.7, 304.14, 305.3, 502.1, 602.1, 604.3) City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **126 N. Charles Street** - Violation(s) – Peeling paint; roof in disrepair; insect screens; interior surfaces (ceiling and walls have water damage); plumbing facility requirements - flooring, bathtub, walls, toilet and piping; heating facilities required; inadequate electrical wiring; Failure to obtain a business tax receipt (BTR); failure to obtain a residential rental license (RTL) - First Notified – 5/12/2016.

Respondent was not present.

Mr. Jackson stated the property was in non-compliance but good progress was being made and the tenant has been evicted. Staff was recommending amending the compliance date to the next cut-off date.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until October 5, 2016 to come into compliance or be returned to a subsequent meeting for consideration of a fine of up to \$1,000 per day thereafter.

CASE NO 10 SMG 09-16-56 – Love Tabernacle Cogic, Inc. c/o Richard Butts, Trustee is cited for failure to correct violations of the Land Development Code, Art. 3 Sec. 3.4.S.1; City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **347 S. Martin Luther King Blvd.** - Violation(s) – No permit for plumbing system; No business tax receipt (BTR); No residential rental license (RTL) - First Notified – 7/16/2016.

Mr. Edward Butts came forward and was sworn. Mr. Butts stated that he was appearing on behalf of Love Tabernacle and he had the authority to speak. Mr. Butts stipulated to the non-compliance except for the rental license.

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

Mr. Butts stated he believed he could have everything corrected by October 5th.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 5, 2016 or be returned to a subsequent meeting for consideration of a fine of up to \$1,000 per day thereafter.

CASE NO 11 SMG 09-16-52 – Hamflor Holdings, LLC 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, 504.1, 304.15, 304.7, 704.2, 605.1, 604.3, 304.13, and 605.1) City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **734 Flanders Avenue** - Violation(s) – Damaged interior surfaces; inoperable receptacles; leaking plumbing fixtures (piping); damaged exterior doors; damaged roof; lack of smoke detectors; damaged electrical fixtures; electrical system hazard (tripping breakers); broken windows; exposed electrical wiring; failure to obtain business tax receipt (BTR); failure to obtain residential rental license (RTL) - First Notified – 7/20/2016.

Hamid Toutouchian, property manager, came forward and was sworn. Mr. Toutouchian stated some of the violations existed but he believed the floor was in compliance.

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

Mr. Stenson stated the violations were the result of a tenant complaint. Mr. Stenson stated the foundation is cracked from the front of the property to the back of the property. Mr. Stenson believed if a contractor was involved he could be in compliance by next cut-off. Mr. Stenson stated the floor has been replaced but the crack in the foundation was not fixed.

Mr. Vukelja asked if a structural engineer was needed.

Mr. Stenson stated he believed they would need a structural engineer.

Mr. Toutouchian stated he has a letter from a general contractor that states there is nothing wrong with the crack and he also had a home inspection report. Mr. Toutouchian stated the only thing remaining is a pane of glass that is on order.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 5, 2016 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day thereafter.

CASE NO 12 SMG 09-16-53 – Craig D. Conway is cited for failure to correct violations of the Land Development Code, Art. 3 Sec. 3.4.S; Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 308.1, 305.3, 304.15, 504.1, 605.1, 305.6, 304.7, 304.14, 304.13, 302.3); City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294, at **539 Mark Avenue** - Violation(s) – Work without permits; infestation; damaged interior surfaces; dilapidated exterior doors; damaged plumbing fixtures and equipment; electrical wiring; electrical fixtures; damaged interior doors; dilapidated roof (fascia); damaged and missing screens; broken or inoperable windows; dilapidated driveway; failure to obtain business tax receipt (BTR); failure to obtain residential rental license (RTL) - First Notified – 7/21/2016.

Mr. Craig Conway came forward and was sworn.

Mr. Jackson stated a permit for the electrical work was pulled September 6th and a contractor has been hired.

Mr. Conway stated that he has hired a contractor who pulled permits however the tenant was refusing access previously but it is now not occupied.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 7, 2016 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day thereafter and further ordered the property not be rented, occupied or otherwise utilized until compliance is achieved and the exterior shall be maintained to city standards.

CASE NO 13 SMG 09-16-54 – Nicole A. Salomone is cited for failure to correct violations of the Land Development Code, Art. 4 Sec. 4.1.A.; Art. 5 Sec. 5.2.A.2, at **625 N. Halifax Avenue, Unit 26** - Violation(s) – The property is zoned RP. Short term rentals, known as "Other Accomodations" are not a permitted use in the zoning district - First Notified – 6/28/2016.

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. John McGinnis Pres. of the Cobblestone Village Condo Association came forward and was sworn. Mr. McGinnis stated the condo docs provide no rentals for less than 6 month and they have notified Ms. Salamone but she continued to violate.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 5, 2016 or be returned to a subsequent meeting for consideration of a fine of up to \$1,000 per day thereafter.

Mr. Vukelja called for a break at 10:20 a.m.

Mr. Vukelja reconvened the meeting at 10:34 a.m.

CASE NO 14 SMG 09-16-55 – William Dennison, Sr. and Minglers Inc. a/k/a Mingler's Social Club is cited for failure to correct violations of the Land Development Code, Art. 5.2.A.2; City Code Ch. 90 Sec. 90-297; City Code Ch. 90 Sec. 90-298; Art. 3 Sec. 4.S.1; Art. 9 Sec. 9.2.A (Ref. FBC Supp IPMC 504.1, 505.1 and 506.1), at **500 S. Ridgewood Avenue** - Violation(s) – The proposed business is operating as one or more of the following uses: bottle club, adult theater, or nightclub which are not a permitted use in the T-2 zoning district; Operating without a business tax receipt (BTR); Presumption of liability for operating a business without a business tax receipt; No permit for new fence; no water, plumbing sanitary systems. First Notified – 5/19/2016.

Attorney Brett Hartley appeared on behalf of the Respondents.

Mr. William Dennison and Mr. Wesley Amos came forward and were sworn.

Mr. Vukelja asked Mr. Hartley if his clients agreed to non-compliance.

Mr. Hartley stated his clients did not agree to non-compliance.

Mr. Vukelja asked if the parties agreed that the zoning district for the property is a T-2 zoning district and further that an adult theater, bottle club or nightclub is not permitted in the district.

Mr. Jackson and Mr. Hartley agreed.

At approximately 10:37 a.m. Mr. Jackson called the first witness, Ms. Susette Day, to testify.

Ms. Hampton swore in Ms. Day.

Mr. Jackson began direct examination of Ms. Day.

Ms. Day stated she was employed by the City of Daytona Beach as License Officer and she received an application in April 2016 from Mr. Amos, the business owner of Mingler's Inc.

Mr. Jackson presented the application for business tax receipt as the City's Exhibit 1.

Ms. Day provided testimony with regard to her conversation with Mr. Amos about what type of business he would be operating at the location to which Mr. Amos advised her it would be a social club like an elk's lodge. Ms. Day further stated the process of submitting the application for review with the Redevelopment Division for approval. Ms. Day further advised Redevelopment stated they needed more information regarding the activity to which Mr. Amos provided.

Mr. Jackson presented the description from Mr. Amos as City's Exhibit 2.

Ms. Day stated the business tax receipt was denied and the water services were terminated as a result of the business tax receipt denial. Ms. Day stated she did provide notice to the business owner. Ms. Day stated Redevelopment denied the business tax receipt based upon the description of the business that was provided described more of a bottle club which was not permitted in the T-2 zoning district. Ms. Day stated she prepared a denial letter and mailed to the property owner and business owner by certified mail.

Mr. Jackson presented the denial letter dated May 16, 2016 as City's Exhibit 3.

Mr. Jackson presented the termination of water services letter dated June 2, 2016 as Exhibit 4.

Mr. Jackson concluded his direct examination of Ms. Day.

At approximately 10:45 a.m. Mr. Hartley began cross-examination of Ms. Day.

Mr. Hartley inquired of Ms. Day if she took part in the determination that Mingler's was being used as a bottle club, adult theater or night club.

Ms. Day stated she was part of that decision and based her decision on the information received in the letter received from Mr. Amos. Ms. Day stated the letter from Mr. Amos stated they did not serve alcohol but allowed members to bring their own alcohol which describes a bottle club. Ms. Day stated they had an inspection of the business and what she saw led her to the determination of an adult theater. Ms. Day stated there was beds, and upstairs there was a dancing cage, a couple of rooms had crosses and an X for someone to be strapped to, whips, masks, and leather items. Ms. Day stated upstairs there was a DJ booth and a dance floor which led to the determination of a night club.

Mr. Hartley concluded his cross-examination of Ms. Day.

Mr. Vukelja asked if she personally took part in the inspection.

Ms. Day stated yes she was involved in the inspection along with three other people and what she described was what she saw and was her personal observations.

Mr. Jackson called Jason Jeffries from the Redevelopment Department.

At approximately 10:49 a.m. Jason Jeffries came forward and was sworn.

Mr. Jackson stated Mr. Jeffries had a power point he would like to present in addition to his testimony.

Mr. Jeffries stated he is a project manager with the Redevelopment Department. Mr. Jeffries stated he is assigned to the Downtown Redevelopment Area and the property 500 S. Ridgewood is located in the Downtown Redevelopment area.

Mr. Jeffries stated there is a typo on the power point that says 500 S. Beach Street but the correct address is 500 S. Ridgewood Ave. Mr. Jeffries powerpoint described the location of the property and zoning district and the purpose of the touring districts. Mr. Jeffries power point included a timeline of the application, reasons for denial, city code definition of a club or a lodge, and a club or lodges use standards pursuant to the City's Land Development Code. Mr. Jeffries also described the city code definition of a night club.

Mr. Vukelja asked Mr. Jeffries to walk him through the layout of the building and what he saw.

Mr. Jeffries described he saw a reception area when walking through the front door and to the right was a buffet line. Mr. Jeffries stated he walked upstairs and there was a large room where there was a cage for dancing and a stripper pole and lights common to a nightclub. Mr. Jeffries stated off of that large room there were 2 or 3 private rooms with beds. Mr. Jeffries stated back on the first floor and to the right of the buffet line and beyond the commercial kitchen there were other larger rooms with several beds in them and then there were rooms that looked to be more like voyeur rooms that contained massage tables where people could view massages or any sexual activity that could occur on the beds. Mr. Jeffries stated the doors were glass and you could see through onto the beds. Mr. Jeffries stated there was also another room where sadomasochistic materials were stored which included a cross where someone could be strapped. Mr. Jeffries stated with all that information along with the Mingler's website led to their determination of an adult theater.

Mr. Jeffries described the exhibit which included the Mingler's website and advertisements on third party websites. Mr. Jeffries stated the advertisements included adult activities and night club activity.

Mr. Jeffries stated Mingler's did have remedies available to include appealing staff decision to the Planning Board which should have been done within thirty days; Relocate to a zoning district where the activity is permitted; apply for special use permit if they want to operate more as a night club.

Mr. Jackson conclude his direct examination of Mr. Jeffries.

At approximately 11:06 a.m. Mr. Hartley begin cross-examination of Mr. Jeffries.

Mr. Hartley asked Mr. Jeffries to refer to the handout that included copies of the Mingler's website and advertisements. Mr. Hartley asked Mr. Jeffries if he knew for certain that Mingler's was advertising on third party websites.

Mr. Jeffries stated he did not know for certain but there are links from their website to the SDC website.

Mr. Hartley asked if Mr. Jeffries had any direct knowledge if Swinglifestyle.com was also Mingler's Club.

Mr. Jeffries stated no he did not.

Mr. Hartley asked Mr. Jeffries to describe the definition of a bottle club, what he observed on the property and what made him believe that Mingler's was an adult theater.

Mr. Hartley asked Mr. Jeffries if he observed any movie screens or camera or projection equipment on the property.

Mr. Jeffries stated no he did not.

Mr. Hartley concluded his cross-examination.

Mr. Vukelja reviewed the website materials provided by the City with Mr. Jeffries. Mr. Vukelja read the advertisement submitted for the April 22, 2016 party.

Mr. Jackson asked Mr. Jeffries if there was any advertisement of the Swing Life Style banners in the site.

Mr. Jeffries stated he did not recall.

Mr. Hartley asked Mr. Jeffries if he has received any information that Mingler's controlled Swing Life Style website.

Mr. Jeffries stated he did not have information to know that.

Mr. Jackson asked Mr. Jeffries if the website has been viewed since the denial.

Mr. Jeffries stated yes it has.

Mr. Jackson asked if events occurred during the time periods that was advertised on the website.

Mr. Jeffries stated yes there were events as advertised.

Mr. Hartley stated there is no evidence that Mingler's controls Swing Life Style.

At approximately 11:15 a.m. Mr. Jackson called to Ofc. Houssamy to testify.

Ofc. Houssamy came forward and was sworn.

Mr. Jackson asked Ofc. Houssamy to describe his observations on July 30, 2016 at 11:30 p.m.

Ofc. Houssamy stated he was conducting a direct patrol and was told 500 S. Ridgewood was not supposed to be operating and no activity should be occurring at the location. When he drove to the location he observed a parking lot full with approximately 34-40 cars in the parking lot. Ofc. Houssamy stated he saw a white plastic sign that said "Private Event No Trespassing" and witnessed people walking in and out of the door. Ofc. Houssamy stated he saw someone guiding vehicles into a parking spot and someone standing near the sign.

Mr. Jackson concluding his direct examination of Ofc. Houssamy.

Mr. Hartley elected to not cross-examine Ofc. Houssamy.

At approximately 11:19 AM Mr. Jackson called Officer Ryan Forrest to testify.

Ofc. Forrest came forward and was sworn.

Mr. Jackson asked Ofc. Forrest to describe what he observed on June 16, 2016 at 9:30 p.m.

Ofc. Forrest stated while on direct patrol to the area and he observed from his vehicle and noticed different colored lights coming from the windows that did change color. Ofc. Forrest stated he then drove around the back of the building and could see approximately 10 cars in the parking lot. Ofc. Forrest stated he was then diverted with another police call but then came back later that evening and noticed

approximately 20 vehicles in the parking lot and activity at the front door. Ofc. Forrest stated he did not have any encounters with anyone at the property.

Mr. Hartley elected to not cross-examine Ofc. Forrest.

At approximately 10:21 a.m. Mr. Jackson called Officer Ashley Rossi for testimony.

Ofc. Rossi came forward and was sworn.

Mr. Jackson asked Ofc. Rossi to describe her observation on July 15, 2016 at approximately 10:30 p.m.

Ofc. Rossi stated she was on a directed patrol to observe any activity going on at the property. Ofc. Rossi stated she was made aware that they were advertising activities on a website and she observed there was different colored lights she could see through the windows and also she heard muffled music coming from inside the building.

Mr. Jackson asked if it was her body camera footage that was being observed. (City's Exhibit 6)

Ofc. Rossi stated yes it was. Ofc. Rossi then realized the footage was not her body camera it was her partner's axon camera footage. Ofc. Rossi was present when the footage was taken. Ofc. Rossi stated when they walked up the property and her partner Ofc. Maher knocked on the door and made contact with Mr. Amos. Ofc. Rossi stated she was trying to make contact with the individuals on the front porch area but they would not speak with her. Ofc. Rossi stated they asked if they could come inside the building and were told no that it was a private party and shut the door and Mr. Amos quickly walked them down to the parking lot. Ofc. Rossi stated Mr. Amos was wearing a sequin animal print shirt that matched the theme of the jungle night that was advertised. Ofc. Rossi stated she could see lights coming from the building and she could see by the windows from the outside there appeared to be a top of a cage and top of a stripper pole.

Mr. Jackson asked Ofc. Rossi if she has been by the property based upon notice of advertised activity.

Ofc. Rossi stated she did go by the property this past Saturday they were advised of a black out party that was occurring on September 10th going into September 11th at midnight. Ofc. Rossi stated she observed lights and the music was louder this time and she could clearly hear the music. Ofc. Rossi stated there were approximately 15-20 cars parking along with a parking lot greeter and sign. Ofc. Rossi stated Mr. Amos approached them and asked what they were doing. Ofc. Rossi stated they were conducting a patrol and he advised he was just making sure they were not on his property.

Mr. Jackson concluded his direct examination of Ofc. Rossi.

At approximately 11:31 a.m. Mr. Hartley began cross-examination of Ofc. Rossi.

Mr. Hartley asked if Ofc. Rossi was aware of a party was occurring next door at the fraternity house.

Ofc. Rossi stated she was aware of the frat house party.

Mr. Hartley asked if it was true the music was coming from the Fraternity House.

Ofc. Rossi stated there was clear distinction between the music coming from the fraternity house and Minglers.

Mr. Hartley concluded his cross-examination of Ofc. Rossi.

Mr. Jackson called Tom McSwiggan to testify.

Mr. Thomas McSwiggan came forward and was sworn.

Mr. Jackson stated he received correspondence from Mr. McSwiggan and provided it to Mr. Vukelja as Exhibit 7.

Mr. Vukelja reviewed the email submitted by Mr. Jackson.

Mr. Jackson asked Mr. McSwiggan to describe who he is and what relevance he has to the case.

Mr. McSwiggan stated he was House corporation president of the Aota Iota Chapter of Sigma Kai Fraternity. Mr. McSwiggan stated it is a national fraternity and this particular section is associated with Embry Riddle University. Mr. McSwiggan stated the property was next door to the Mingler's club. Mr. McSwiggan stated the first time he became aware of the property was when two of the undergraduate brothers told him they were offered a tour of the property by Wes Amos and they were brought through the house at 500 S. Ridgewood Avenue and described the interior of the house and described the property as a sex club. Mr. McSwiggan stated they were told Mr. Amos told them he had paid \$350,000 to put the sex club together and they were very careful. Mr. McSwiggan further described the brothers told him they were convinced the property was a sex club. Mr. McSwiggan stated he was concerned about this establishment being next door to the Fraternity House.

Mr. Jackson concluded is direct examination of Mr. McSwiggan.

Mr. Hartley asked Mr. McSwiggan if he was aware if any of the fraternity brothers being members of Minglers.

Mr. McSwiggan stated he was not aware of that and he would hope they were not.

Mr. Hartley asked if it was common practice for a fraternity to throw parties.

Mr. McSwiggan stated yes.

Mr. Vukelja stated he was not interested in hearing about the fraternity house since no one is alleging the fraternity house is operating outside of their zoning district.

At approximately 11:45 a.m. Mr. Jackson recalled Susette Day.

Mr. Jackson asked Ms. Day if she recalled seeing banners inside the property during her inspection.

Ms. Day stated yes she saw two banners on the walls one was swinglifestyle.com and the other was minglers.com. Ms. Day stated she asked Mr. Amos after the inspection if he would consider himself a swinger's club. Ms. Day stated he was not going to lie to her he said yes that was what they were doing. Ms. Day then stated she asked Mr. Amos if there was any sexual activity going on inside and Mr. Amos stated he was not aware and does not know what goes on behind closed doors.

Mr. Jackson recalled Jason Jeffries.

Mr. Jackson asked Mr. Jeffries if right now if the property has any zoning designation or authorized use permitted at this facility.

Mr. Jeffries stated no because there is no current business tax receipt because what they applied for was not allowed. Mr. Jeffries stated a restaurant and a church were previously there.

Mr. Vukelja asked Mr. Jeffries to bring up the definition of bottle club, adult theater and night club.

Mr. Jeffries read the definition of a bottle club, adult theater and night club.

At approximately 11:52 a.m. Mr. Hartley called Mr. Amos for testimony.

Mr. Hartley asked Mr. Amos to identify himself and describe what the Mingler's organization is.

Mr. Amos stated he was president of the nonprofit organization and further advised the club is a group of like-minded people who get together and socialize, they are a social club. Mr. Amos stated the organization is a 501c3 and is a not for profit organization. Mr. Amos stated he does not sell alcohol at the club. Mr. Amos stated they have a screening agreement, membership agreement and rules. Mr. Amos stated someone off the street could not just walk in and become a member.

Mr. Hartley asked Mr. Amos if there were any rooms with glass doors to be used for peeping or voyeurism.

Mr. Amos stated no but there are glass doors that are painted so no one can see.

Mr. Hartley asked if there were any one-sided mirrors.

Mr. Amos stated no.

Mr. Hartley asked if the fetish room that was described if people were actually affixed to a cross.

Mr. Amos stated no and there is an open frame case.

Mr. Hartley showed a picture of the fetish room on his phone to Mr. Amos and asked if that was the room that was described in earlier testimony.

Mr. Hartley asked Mr. Amos if swinging was a part of the life style and if swinging took place on the property.

Mr. Amos stated yes swinging was a part of the like-minded lifestyle but it did not occur on the property. Mr. Amos stated it was meeting place designed for people to meet and if they choose behind closed doors so be it. Mr. Amos stated soda, juices and water were supplied on the property but no alcohol.

Mr. Hartley asked if his business was operating for profit as the definition of a bottle club states per Florida Statutes.

Mr. Amos stated no.

Mr. Hartley asked Mr. Amos if the business was operating as an adult theater.

Mr. Amos stated no.

Mr. Hartley asked what the difference was in sadomasochistic and fetish.

Mr. Amos stated fetish is different types of things that people want to learn about and do.

Mr. Hartley asked if sadomasochism involved pain.

Mr. Amos replied he did not know as they were not into that and no sadomasochistic things were taking place.

Mr. Hartley asked if Mr. Amos fell into any of the categories of definition of night club, adult theater or bottle club.

Mr. Amos stated no.

Mr. Vukelja asked Mr. Amos about the website advertisements.

Mr. Vukelja asked Mr. Amos if the advertisement was for an event at his location.

Mr. Amos stated the ad was not created by them.

Mr. Vukelja asked who it was created by.

Mr. Amos stated there are groups and different websites everywhere. Mr. Amos stated if they email something in their private group and it is posted on a third party website they cannot control that.

Mr. Vukelja asked if those people would also be posting about membership fees. Mr. Vukelja asked if they had an event on April 27th entitled PJ's and Teddies.

Mr. Amos stated that was a long time ago and could not say for certain.

Mr. Vukelja asked who authored the document.

Mr. Amos stated he did not know.

Mr. Vukelja read portions of the advertisement and asked Mr. Amos if Minglers wrote that.

Mr. Amos stated Mingler's did not write the advertisements.

Mr. Vukelja further went through sections of the advertisements and inquired of Mr. Amos if the descriptions were what occurred on the property.

Mr. Jackson provided an affidavit of Ofc. Tim Ehrenkaufner as it related to the websites as City's Exhibit 8.

Mr. John Nicholson came forward and was sworn. Mr. Nicholson stated he managed the largest discos in Miami Dade County. Mr. Nicholson stated there are no nightclubs that have beds inside them. Bottle club do not have beds. Mr. Nicholson stated if it walks like a duck and quacks like a duck it's a duck.

Mr. Jackson presented Exhibit 9 which is an affidavit from Ofc. Brian Quiones.

Mr. Jackson presented Exhibit 10 to the affidavit from Ofc. Jerome Hassell.

Ruling

Mr. Vukelja found the Respondents in non-compliance and ordered the Respondents cease all prohibited activity on the property by Friday September 16, 2016 or be returned to a subsequent meeting for consideration of up to \$1,000 per day and further ordered Respondents to come into compliance by removing the advertising of events on all websites by October 5, 2016 or be returned to a subsequent meeting for consideration of a fine of up to \$1,000 per day until compliance is achieved.

MISCELLANEOUS BUSINESS

There was no miscellaneous business.

Adjournment:

The meeting was adjourned at 12:20 p.m.