
City of Daytona Beach Special Magistrate

City Commission Chambers, 301 S Ridgewood Ave, Daytona Beach, FL 32115

Robert J. Riggio, Special Magistrate

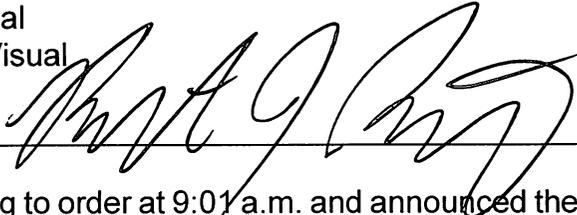
October 24, 2023 Minutes

Attendees:

Robert J Riggio, Special Magistrate

Staff present:

Mr. Anthony Jackson, Deputy City Attorney
Sgt. Timothy Blowers, Daytona Beach Police Officer
Mr. Kevin Yates, Rental Inspector
Ms. LaWanda Tomengo, Rental Inspector
Mr. Karl Wexelberg, Rental Inspector
Ms. June Barnes, Rental Program Coordinator
Mr. Joe Graves, Audio/Visual
Mr. Charles Smarr, Audio/Visual

Approval of Minutes by:  Special Magistrate

Mr. Riggio called the meeting to order at 9:01 a.m. and announced the procedure for the meeting.

Mr. Riggio asked for announcements and there were none.

Mr. Riggio approved the minutes of the September 26, 2023 meeting.

The Board Secretary swore in members of staff who will be testifying.

Mr. Riggio called the first case.

MB-1 - SMG 01-22-70 - Florida Pacific Leasing CO LLC is cited for failure to correct violations of Art. 6 Sec.6.1, at **316 Main St.** Violation(s) – **Failure to follow seating plan.** First Notified – 10/13/2021. Compliance – January 7, 2022

Mr. Michael Moore, Esq. came forward.

Mr. Anthony Jackson stated the case was placed on the agenda in response to a court order to add findings of fact into the case. He stated the deadline is November 3rd. He stated they are proposing an alternative solution that both sides believe is reasonable and fair. He stated the case was resolved in 2022 with a finding of Non-Compliance and Order of Compliance and the violations have not continued since there have been no special events, however the violation affects participation in the events and the parties jointly agree there is no benefit to going back to court. He stated he is asking the Magistrate to vacate the Finding of Non-Compliance. He

stated there were 2 cases which have the same effect and is recommending to dismiss the appellate case.

Mr. Moore stated he doesn't disagree.

Mr. Jackson asked Mr. Moore if the order was vacated, would he ask for the appellate case to be dismissed?

Mr. Moore stated if SMG 01-22-70 is vacated, there is nothing to appeal.

DISPOSITION: After hearing the arguments, the Special Magistrate vacated the Order of Non-Compliance dated February 23, 2022.

LR-1 - 521 Division St - RTL 06-20-27 - Samuel L & Rhonda P Ferguson is cited for failure to correct violations of City Code Ch. 90 Sec. 90-297; City Code Ch. 26 Sec. 26-294. Violation(s) – **Failure to obtain Business Tax Receipt (BTR), failure to obtain Rental License (RTL).** First Notified – 1/27/2020. **Order Imposing Fine Lien of \$100 per day to a maximum of \$15,000.00 imposed August 25, 2020. Compliance via Affidavit Not To Rent = October 3, 2023. Amount due: \$15,000.00 + \$24.00 recording fee + \$2,658.52 interest = \$17,682.52.**

Respondent was not present.

Inspector Karl Wexelberg stated the City met with Mr. Ferguson and agreed to a reduction of the fine to \$5,000.00, payable within 30 days, or the fine reverts back to the original amount.

DISPOSITION: The Special Magistrate reduced the amount of the lien to \$5,000, payable within 30 days, or the fine reverts back to the original amount.

LR-2 - 836 Berkshire Rd - RTL 05-21-99 - Willetta Harmon (current owner is Rose Investments LLC) is cited for failure to correct violations of City Code Ch. 26 Sec. 26-294, at Violation(s) – **Failure to obtain Rental License (RTL).** First Notified – 8/27/2020. **Order Imposing Fine Lien of \$100 per day to a maximum of \$15,000.00 imposed June 22, 2021. Compliance via Affidavit Not To Rent = September 22, 2023. Amount due: \$15,000.00 + \$24.00 recording fee + \$1,189.44 lien interest = \$16,213.44.**

Ms. Mayra Panora and Ms. Doris Panora appeared via Zoom and were sworn in.

Inspector LaWanda Tomengo stated that the City met with Ms. Mayra Panora and is requesting a partial release from the current owner.

Mr. Anthony Jackson, Deputy City Attorney, clarified that the City would agree to release the parcel only and the previous owner remains encumbered.

DISPOSITION: The Special Magistrate ordered a partial release for the parcel only and the previous owner still remains encumbered by the lien.

NEW CASES: IRREPARABLE/IRREVERSIBLE

CASE # 1 - RTL 10-23-62 - Nalini & Arun Karamchandani is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **582 Revilo Blvd.** Violation(s) – Zoning

violation - the property is zoned SFR-5. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 9/15/2023.

Respondent was not present.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. Short-term rentals, known as other accommodations are not a permitted use in the zoning district. He stated he first observed the violation on September 15, 2023 and notified the Respondent the same day. He stated as of September 15th, 2023, they were no longer actively advertising. He stated the website shows a rate of \$90, has 3 reviews and check in and out times are 3-5 pm and 11 am. He stated this is the second case for this address, the first being RTL-03-22-21. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$15,000. He stated the Respondent created a new ad which included altering the front door.

Mr. Riggio asked the inspector if he searches by address and matches photos.

Mr. Yates stated he searches an area but not necessarily an address and uses Zillow and other online pictures to match photos.

Mr. Jackson stated the City's position as to why the violation should be found irreparable and irreversible in nature and asked the Magistrate to consider it in his decision.

DISPOSITION: After hearing the arguments, the Special Magistrate found that the property was previously in Non-Compliance for violation of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2 and that the violation was irreparable and irreversible in nature and is a repeat violation. He imposed a one-time fine in the amount of \$15,000, payable within 30 days, and for any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence. It was further ordered the property is in Compliance as of September 15, 2023.

CASE # 2 - RTL 10-23-63 - Stoza Inc is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **932 Pelican Bay Dr.** Violation(s) – Zoning violation - the property is zoned PD-G. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 9/28/2023.

Respondent was not present.

Inspector Kevin Yates stated the case began from a complaint and the property is zoned PD-G. Short-term rentals, known as other accommodations are not a permitted use in the zoning district. He stated he first observed the violation on September 27, 2023 and notified the Respondent on September 28, 2023. He stated as of October 18th, 2023, they were no longer actively advertising. He stated the website shows a nightly rate of \$462, has 3 reviews and check in and out times are 4 pm and 11 am. He stated this is the fourth violation for this Respondent, RTL-03-23-21 on March 28, 2023; RTL 06-23-42 on July 25, 2023; and RTL 09-23-61 on September 26, 2023. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$15,000.

Mr. Jackson stated the City's position as to why the violation should be found irreparable and irreversible in nature and asked the Magistrate to consider it in his decision.

Mr. Riggio asked the inspector if he had been in communication with the homeowner's association.

Inspector Yates stated yes and that the Respondent just decided to stop.

Mr. Jackson stated for the record that it should be made clear that future violations may warrant an injunction.

DISPOSITION: After hearing the arguments, the Special Magistrate found that the property was previously in Non-Compliance for violation of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2 and that the violation was irreparable and irreversible in nature. He ordered that a one-time fine in the amount of \$15,000 be imposed, payable within 30 days, and for any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence. It was further ordered the property is in Compliance as of October 18th, 2023.

CASE # 3 - RTL 10-23-65 - Keith Christopher Kong & Patrick Vibert Kong is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **400 Oakridge Blvd #0260**. Violation(s) – **Zoning violation - the property is zoned RP. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district.** First Notified – 9/19/2023.

Mr. Keith Kong came forward and was sworn in.

Inspector Yates stated the case was field driven. The property is zoned RP and short-term rentals, known as other accommodations are not a permitted use in this zoning district. He stated he first observed the violation on September 19th and the owners were notified on the same day. He stated they were no longer active as of September 20th, 2023. According to the website, the daily rate was \$106, there were 3 reviews, check in time was 4 pm and check out was 10 am and since this is an irreparable and irreversible violation is asking for a one-time fine in the amount of \$1,000.

Mr. Kong agreed to waive Mr. Jackson's presentation and agreed to his irreparable and irreversible argument to be placed on the record.

Mr. Kong stated the violation is not fair. He stated he spoke to the President of the HOA and is paying taxes. He stated he had a management company and disagrees that one day of advertising can book a whole year. He stated he is asking for the fine to be reduced to \$750.

There was discussion regarding the management company, which had arranged the rental, and had not informed the homeowner that this rental was not allowed by City Code. Mr. Jackson stated the homeowner can go back and deal with this with the management company.

DISPOSITION: After hearing the arguments, the Special Magistrate found that the property was previously in Non-Compliance for violation of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2 and that the violation was irreparable and irreversible in nature. He ordered that a one-time fine in the amount of \$750.00 be imposed, payable within 30 days, and for any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence. It was further ordered the property is in Compliance as of September 20, 2023.

CASE # 4 - RTL 10-23-66 - Jonathan Grieco is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **400 Oakridge Blvd #0080**. Violation(s) – Zoning violation - the property is zoned RP. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 9/19/2023.

Mr. Jonathan Grieco appeared via Zoom and was sworn in.

Inspector Yates stated the case was field driven. The property is zoned RP and short-term rentals, known as other accommodations are not a permitted use in this zoning district. He stated he first observed the violation on September 19th, 2023 and the owners were notified on the same day. He stated they were no longer active as of September 20th, 2023. According to the website, the daily rate was \$90, there were 59 reviews, check in time was 4 pm and check out was 10 am and since this is an irreparable and irreversible violation is asking for a one-time fine in the amount of \$1,000.

Mr. Grieco agreed to waive Mr. Jackson's argument presented in Case 1 and 2 and agreed to his irreparable and irreversible argument being placed on the record for consideration by the Magistrate in his decision.

Mr. Grieco stated he did not believe there was irreparable damage to the City. He stated they have doubled insurance related to the density. He stated Summer Winds Condo Association allows 6 people per unit and they provide rules to their guests. He stated they installed monitoring equipment and noise and smoke monitors to prevent noise after 10 pm. He stated he has someone on site and that he is in Compliance with State and Tourism tax. He stated they want to be a good neighbor and he is a member of the HOA Board. He stated he did not understand that he was not in Compliance with zoning since the prior owner used the property for short-term and the HOA allowed it. He stated he stopped advertising immediately.

Mr. Jackson stated the fact that he is on the Board is concerning. He stated they are operating as a hotel which is not permitted by code.

There was further discussion regarding letting the Board know these rentals are not a permitted use and the City is not able to alter the ordinance at this time.

DISPOSITION: After hearing the arguments, the Special Magistrate found that the property was previously in Non-Compliance for violation of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2 and that the violation was irreparable and irreversible in nature. He ordered that a one-time fine in the amount of \$750.00 be imposed, payable within 30 days, and for any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence. It was further ordered the property is in Compliance as of September 20, 2023.

CASE # 5 - RTL 10-23-67 - Mario & Molly Lamoureaux is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **120 Bellevue Ave**. Violation(s) – Zoning violation - the property is zoned MFR-40. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 9/19/2023.

Mr. and Mrs. Lamoureaux appeared via Zoom and were sworn in.

Inspector Yates stated the case was field driven. The property is zoned MFR-40 and short-term rentals, known as other accommodations are not a permitted use in this zoning district. He

stated he first observed the violation on September 19th, 2023 and the owners were notified on the same day. He stated they were no longer active as of October 11th, 2023. According to the website, the daily rate was \$115, there were 9 reviews, check in time was 4 pm and check out was 10 am and since this is an irreparable and irreversible violation is asking for a one-time fine in the amount of \$1,000.

Mr. Lamoureux agreed to waive Mr. Jackson's argument presented in Case 1 and 2 and agreed to his irreparable and irreversible argument being placed on the record for consideration by the Magistrate in his decision.

Ms. Lamoureux stated they purchased the property in June as an investment property. He stated the property was used by the sellers as an Airbnb and had furniture and everything all set up so she felt like they just took over. She stated they filed County and State license and trusted in the Realtor and Management Company that it was allowed.

There was further discussion regarding homeowners holding Realtors and Management Companies responsible for giving them bad advice.

DISPOSITION: After hearing the arguments, the Special Magistrate found that the property was previously in Non-Compliance for violation of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2 and that the violation was irreparable and irreversible in nature. He ordered that a one-time fine in the amount of \$750.00 be imposed, payable within 30 days, and for any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence. It was further ordered the property is in Compliance as of October 11th, 2023.

CASE # 6 - RTL 10-23-69 - Robert & Nancy Beverly Hackman is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **715 S Beach #112-D**. Violation(s) – Zoning violation - the property is zoned MFR-40. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 9/13/2023.

Ms. Beverly Hackman came forward and was sworn in.

Inspector Yates stated the case was field driven. The property is zoned MFR-40 and short-term rentals, known as other accommodations are not a permitted use in this zoning district. He stated he first observed the violation on September 13th, 2023 and the owners were notified on the same day. He stated the advertising is still active as of today. He stated according to the website, the daily rate was \$87, there was 1 review, check in time was 4 pm and check out was 10 am and since this is an irreparable and irreversible violation is asking for a one-time fine in the amount of \$15,000.

Ms. Hackman waived Mr. Jackson's argument, presented in Case 1 and 2, and agreed to his irreparable and irreversible argument being placed on the record for consideration by the Magistrate in his decision.

Mr. Jackson stated based on the gravity of the effort to comply and history the property is still being advertised.

Ms. Hackman stated the property is not being advertised and was rented in October. She stated the property can only be rented for 6 months and she has a rental license.

Inspector Yates showed the Magistrate the website on his phone where it shows he was able to select dates less than 6 months.

There was discussion that this website is designed and used for short-term rentals and not long-term rentals. There was further discussion regarding short-term versus long-term time periods.

Mr. Yates stated he has had no communication with the Respondent.

Mr. Riggio stated the issue will not be resolved today and will continue the case until January.

DISPOSITION: The Special Magistrate continued the case to the January 23, 2024 meeting for consideration of the imposition of a fine for irreparable and irreversible violations.

CASE # 7 - RTL 10-23-70 - Orraine & Aisha McFarlane is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **353 Seaview**. Violation(s) – Zoning violation - the property is zoned SFR-5. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 9/6/2023.

Mr. and Mrs. McFarlane appeared via Zoom and were sworn in.

Inspector Yates stated the property is zoned SFR-5 and short-term rentals, known as other accommodations are not a permitted use in this zoning district. He stated he first observed the violation on September 6th, 2023, and the owners were notified on the same day. He stated they were no longer active as of September 7th, 2023. According to the website, the daily rate was \$100, and he spoke to a guest who booked the property on Airbnb. He stated is asking for a one-time fine in the amount of \$1,000.

Mr. McFarlane waived Mr. Jackson's argument presented in Case 1 and 2 and agreed to his irreparable and irreversible argument being placed on the record for consideration by the Magistrate in his decision.

Mr. McFarlane stated they accept Mr. Yates' findings and also pay Florida Sales and Use taxes and use insurance through a property manager.

DISPOSITION: After hearing the arguments, the Special Magistrate found that the property was previously in Non-Compliance for violation of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2 and that the violation was irreparable and irreversible in nature. He ordered that a one-time fine in the amount of \$750.00 be imposed, payable within 30 days, and for any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence. It was further ordered that the property is in Compliance as of September 7th, 2023.

The meeting was adjourned at 11:18 am.