
City of Daytona Beach Special Magistrate

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

David A. Vukelja, Special Magistrate

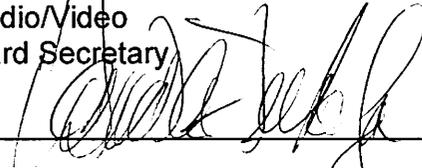
April 12, 2024 Minutes

Attendees:

David A. Vukelja, Special Magistrate

Staff present:

Mr. Anthony Jackson, Deputy City Attorney
Mr. Denzil Sykes, Code Compliance Manager
Mr. Mark A Jones, Code Field Supervisor
Sgt. Timothy Blowers, Code Liaison
Mr. Joe Graves, Audio/Video
Mr. Xavier Campbell, audio/Video
Ms. Kimberly Reno, Board Secretary

Approval of Minutes by:  _____ Special Magistrate

The meeting was called to order at 2:10 p.m.

Mr. Vukelja asked for all the representatives for the city of Daytona Beach that will be testifying in this proceeding be sworn

Mr. Jackson questioned whether we have someone on zoom.

Mrs. Reno confirmed that they were given the links, noticed and should be there.

Mrs. Reno swore in all city staff.

Some technical difficulties with zoom and new links needed to be sent out.

CASE # 1 - SMG 04-24-80 - Ivan & Cardin LLC & Tammi Tran & Social Daytona Inc is cited for failure to correct violations of The Land Development Code, Art. 10 Sec. 10.2.B.2, at 631 N Grandview Ave. Violation(s) – Occupying or using land or a structure without first obtaining all appropriate development permits. First Notified – 1/5/2024.

Attorney Lambert (present), Attorney Vagovic (via zoom), Ms. Tran ran (via zoom), sworn in.

Mr. Vukelja asked what the city is looking for.

Supervisor Jones stated that the city is asking for an irreversible/irreparable fine of \$15,000 for the property owner and the tenant.

Mr. Vukelja advised he presumes the city has a will-fine in place consequently we can dispense with need for the finding of compliance or non-compliance?

Mr. Jackson advised that the special magistrate previously made a finding that these violation, the nature of the violations were irreparable or irreversible in nature based upon and pursuant to chapter 162.09.1.d which basically would represent that the acts that were done or acts that cant be reversed in terms of its economic benefits that occurred at the time that the violation occurred and it cant be undone as well as the impact or effects of the actions that were taken or were done in such a way that they cant be now undone. So based on the prior ruling of that being deemed irreparable and irreversible the city comes again with that same determination

so its not really necessary for it to also be recognized as a repeat violation but yes indeed it would be a repeat violation which through the repeat violation process the maximum fine is \$10,000, through the irreparable/irreversible its \$15,000. The city is proceeding under the request that it be deemed irreparable and irreversible in nature and that a \$15,000 be considered by the magistrate and that will be based upon the evidence that we will present to show the egregiousness/gravity of the violation and the efforts of the respondent to come into compliance.

Mr. Vukelja advised before we go into the evidence and any substantive determinations does any of the respondents what to be heard as to the procedural posture of the matter before we get into the testimony? In other words, it sounds like we previously found the respondents in non-compliance, we previously made a determination that there was a violation if he's not mistaken, we previously fined both respondents. He does not want to characterize this as a repeat violation because counselor indicates it may be something different than that. So does anyone want to be heard procedurally on where we stand before we get into it.

Mr. Lambert advised the only issue from Social Daytona, that they were not provided notice of that February hearing, they were not here for that. **Mr. Vukelja** advised have we not heard that already, the February hearing is the hearing in which we fined them \$15,000.00? Let's back up and Mr. City attorney just tell me what you want me to do? **Mr. Jackson** they were noticed for that hearing they weren't present, but I would look to the secretary for the magistrate to provide the assurance that they had been noticed for that proceeding, he thinks they confirmed that they were noticed at the time, and he is sure we can provide that proof of notice **Mr. Vukelja** if your satisfied they were notified that's on you. **Mr. Jackson** advised we are satisfied.

Mr. Vagovic regarding the hearing that was set for this past Wednesday he thinks was the 9th, advised he was never noticed for that his client, they sent certified mail to her address out in Texas but what he sees in the file it was returned as non-delivered and not able to be found so and his office was never given any notice either of the hearing on the ninth. **Mr. Vukelja** asked if anybody else wanted to say anything on the record before they moved on? **Mr. Jackson** advised he would turn it over to the code inspector advising we're here on set of violation related to just what's indicated here on the agenda, we're looking at specifically speaking as to case one so as to that case the violation is a violation of Article 10 Section 10.2.b.2 of the city land development code occupying or using land or structure without first obtaining all appropriate development permits and the city's allegations is that the property is being used and has been used and continues to be used on a regular basis for unlawful sale of alcohol and being operated in essence by all definition pursuant to the evidence that will be presented as a nightclub which would be completely in violation of the elements of this and requirements of this code and so with that being said that is the reason why we're here on this violation, this would be a violation from our perspective that would have required actions both the owner in terms of granting these authorities and the tenant in terms of the actions of actually occupying and using the facility. **Mr. Vukelja** asked what are the appropriate development permits from his edification that the property owner and or the tenant are supposed to have that they don't have that expose them to whatever liability you're about to present? **Mr. Jackson** advised the general surface is that they have to have, if they're going to be selling alcohol they have to have alcohol license, they have to have site plans, they have to approvals from the various divisions of the city which they did not have.

Short discussion on term development permits and an explanation.

Mr. Jackson advised that he has Ms. Askew here to testify or speak to those because she would be the best member of the city to speak.

City staff including City witnesses

Ms. Askew (Project Manager) explained the process and the use of project management for a property. None of the requirements for the use of Hookah and/or liquor have been met. Discussion on the difference between a bar, nightclub, social club, private club. The paperwork that was submitted to the city stated a not-for-profit business and the business is for profit from the evidence that has been collected.

Attorney Lambert asked questions regarding her knowledge of the information that she was testifying in this hearing about? **Ms. Askew** advised that her information was given and provided by the police department, code department and photos that have been taken at the site and her familiarity with the city's ordinance and regulations as she is the person with the city that does the Land Development code regulations. Confirmed she checked with Permits and licensing Kim Flaherty who is present, and she will also testify that those permits have not been pulled.

Mr. Vagovic asked, has Ms. Askew ever spoken to Ms. Tran? **Ms. Askew** advised no.

Mr. Vagovic asked who is responsible for obtaining the permits for tobacco & alcohol. **Ms. Askew** advised the business owner. **Mr. Vagovic**, what business is Ms. Askew referring to? **Ms. Askew** Daytona Social LLC, the business that has the license to operate on that property as a social club. **Mr. Vagovic**, thank you, no further questions.

Mr. Jackson asked, "is there owner obligation also?" **Ms. Askew** Regardless of whether the property is being leased or not, she owns it so ultimate responsibility for making sure that it's developed and operating in the manner that is required by the city, that is the responsibility of the property owner. **Mr. Jackson**, is there something that they sign or in terms of obtaining what they have to obtain? **Ms. Askew** when you say they you mean? **Mr. Jackson** the owner would have to give some type of authority to the tenant. **Ms. Askew**, the owner would have to give the tenant authorization to make those types of repairs and changes on the property and she would have to authorize that use but she could not do that until the city told them it was allowed to be there. **Supervisor Jones** testified to status of the case and the history of the operation. DBPD report on file for the evidence. Mr. Jones had no contact with the property owner and advised there are officers here that can speak to these violations. **Mr. Vukelja** stated so, the officers are going to provide the testimony regarding the conduct complained of? **Mr. Jones** confirmed yes and that he gave an overview. No question from the attorneys for Mr. Jones. **Mr. Lambert** asked the Special Magistrate if he operated by imposing the rule of sequestration for witnesses? **Mr. Jackson** advised there's no formal rule of sequestration but that would obviously. **Mr. Vukelja** asked where are we going to send them, it's piped into the lobby? **Mr. Jackson** advised its public to the whole world right now, that's why were compelled to make it a public meeting. **Mr. Vukelja** advised he was saying no to that request. Discussion on how many witnesses are present. **Lieutenant Gernert (DBPD - witness)** testified to the history of the selling alcohol with undercover operation and search warrants. Multiple arrests regarding these sales. The operation is at midnight and after the club hours. The alcohol is being contained in other drink bottles like sunny delight; no liquor bottles are being held on property since the February hearing. The Hookah is being held in another room on property. The officers and other guests that come in the business are being charged \$50 cover charge which includes the drinks. **Mr. Vukelja** asked what is the business allowed to do on the property? List of rules for the tenant and the owner? What is license or permitted to do? **Mr. Jackson** called Ms. Askew to speak on that. **Ms. Askew** stated that the owner gave the business permit for a private club/lodge not-for-profit (like an elk's lodge) only members. No alcohol, no cover charge, tobacco. If you are not serving or selling alcohol but if you are then you are required to have a liquor license, permit for a time frame for the closing of the business

(approved extended permit for operation until 2am). Hookah establishments are supposed to close at midnight, they are required to have a business license for Hookah and a State of Florida Tobacco License.

Lieutenant Gernert stated that at no point of any of the officers during the operations, were any of them asked to be a member, membership fee and/or sign a form or agreement. Alcohol was sold to one of the officers who is nineteen years old, ID was provided. They also stamp the hand of the individuals who come into the business.

Mr. Vagovic asked **Lieutenant Gernert**:

Mr. Vagovic Has she ever spoke to the owner Tammie Tran? **Lt. Gernert** No **Mr. Vagovic** Was Ms. Tran ever present during the undercover operations? **Lt. Gernert** No **Mr. Vagovic** Was Ms. Tran notified of any of the incidents? **Lt. Gernert** No idea **Mr. Vagovic** Were the owners ever arrested? **Lt. Gernert** Yes, At the state attorney in process.

Mr. Lambert asked **Lieutenant Gernert**:

Mr. Lambert, was she present during the operations? **Lt. Gernert** Only the undercover operation with the phone. **Mr. Lambert** Were the officers using a recording as a CI for the operation? **Lt. Lambert**, Yes **Mr. Lambert** How many years of service? **Lt. Gernert** 21 years **Mr. Lambert**, what is the evidence? **Lt. Gernert** in this case the recording of the undercover operation. Advised how she could hear the operation. **Mr. Vukelja** asked for clarification of the phone recording of the undercover operation. A live recording that is the same app as the officers.

Mr. Lambert asked **Lieutenant Gernert**:

Mr. Lambert What is the time frame from the undercover operation to units going inside of the location? **Lt. Gernert** 15-20 minutes. Discussion on destruction of evidence in cases. Receipt presented from attorney of the evidence that were collected does not show alcohol. Clarification of State Statue 562 regarding liquid being opened and tagged into evidence. The liquid must be identified and tested by smell or taste by the officer. **Mr. Jackson** showed the city 10-2 Code Violation for the City of Daytona.

Mr. Lambert asked **Lieutenant Gernert**:

Mr. Lambert asked was the evidence photographed and recorded. **Lt. Gernert** Yes

Mr. Lambert asked did she physically see the officers being sold the alcohol? Only live and she explained everything that occurred per her observation of the live video. **Mr. Lambert** asked if she kept the empty bottles? **Lt. Gernert** advised they are not allowed. **Mr. Lambert** stated, "so all the evidence was destroyed"?

Mr. Jackson asked some related questions **Lt. Gernert**:

Mr. Jackson, how long has the investigation with this business and the sales? **Lt. Gernert** The ordinance changed in April 2023, so they informed them that they had to fall into compliance there were many code inspections of the business to see that they have a wall of liquor at that point, they were notified back then they weren't allowed to have the alcohol without the permit, but this has been going on since April of 2023. **Mr. Jackson** How many investigations? **Lt. Gernert** Six to seven undercover operations which includes four search warrants. **Mr. Jackson**, did these investigations include the sale of alcohol or tobacco? **Lt. Gernert** Yes, on both with the assistance of the Florida State agency. The Florida State Alcohol & Tobacco agency did the first investigation. **Mr. Jackson** asked if Lr. Gernert and if Ms. Tran was at the meeting in February 2024 and were they notified that alcohol was not permitted? **Lt. Gernert** Yes, on both questions, and notified of the issues at hand. **Mr. Jackson** asked what is her knowledge of alcoholic beverages or tobacco? She has knowledge and sense of smell of both. **Lt. Gernert** further explained that in the last investigation that there was a lot of unopened illegal alcohol collected and tagged. All the alcohol that was opened at that time was photographed and disposed of per the city policy. **Mr. Jackson** What is the time of the

operations? **Lt. Gernert** During the Bike Week (March 2023) the bars closed at 3am so it took place at 3:15am.

Mr. Lambert asked Lieutenant Gernert:

Mr. Lambert At the time of the operations in March, were there any tobacco, hookah and alcohol collected? **Lt. Gernert** yes there was tobacco, there were hookahs lit and live and inside of the business on tables where customers would sit. **Mr. Lambert (inaudible)** **Lt. Gernert** never used hookah. **Mr. Lambert**, was anything taken? **Lt. Gernert** for the tobacco portion, no, the tobacco was not a part of the search warrant. They have a legitimate tobacco license. **Mr. Lambert** what about cannabis, did they find it? **Lt. Gernert** No **Mr. Lambert** What does the stamp say? **Lt. Gernert** SD in plain view on the shelf. **Mr. Lambert**, did you seize that to confirm your testimony? **Lt. Gernert** Only photographed. **Mr. Jackson** advised we are compelled to provide this as a public meeting and asked **Mr. Lambert** if he could speak up, I.T. is trying to make sure he has him properly on the mic. **Lt. Gernert** when it comes to the stamp, her reasoning for photographing the stamp was to prove its another characteristic of them operating as a bar or a nightclub. To seize that was not in her search warrant so she did not seize it but photographed it, it was in plain view. **Mr. Lambert** asked if they search for vehicles. **Lt. Gernert** advised they did **Mr. Lambert** asked had they located any. (in audible) **Lt. Gernert** February one yes.

Mr. Vukelja asked Lieutenant Gernert:

To confirm the total amount of investigations? **Lt. Gernert** At least six to seven. **Mr. Vukelja** Also did these investigations result in some sort of findings of alcohol? **Lt. Gernert** Yes positive for alcohol. **Mr. Vukelja**, what distinguishes what are the circumstances that caused you to go get a warrant opposed to the other three occasions when there was no search warrant? **Lt. Gernert** The first two investigations where she sent in an undercover were to establish that the alcohol sales were occurring so that she could obtain a search warrant the third one there was a time frame where the 30 days to obtain a search warrant was past those 30 days, so her information was considered stale, so she had to conduct another investigation of undercover alcohol purchases to then make her information fresh again to obtain a search warrant.

Mr. Vukelja & Lieutenant Gernert discussed the previous fine/lien that were given February 26, 2024. The Social Club was fined \$15,000 and the building owner Ms. Tran was fined in two instances \$500 each. Any changes from February to March in the activity at the business? **Lt. Gernert** No same activity with the same operation

Mr. Jackson asked questions Lieutenant Gernert:

Mr. Jackson, Were there any businesses perspective heard from? **Lt. Gernert** Multiple businesses have expressed concerns and complaints from having to obey by the extended hours permit and this business does not.

Sergeant Timothy Blowers (DBPD Code Enforcement Leisure) explained his title and years of service. He testified to the use of the alcohol container inside of the business with photos. He did speak to Ms. Tran regarding the issues with alcohol usage. Ms. Tan did state that she would be evicting the current tenants. The eviction process has started but not finished.

Mr. Vagovic asked Sergeant Blowers:

Mr. Vagovic, has he spoken to Ms. Tran since the last contact? **Sgt Blowers** only communicates via email.

Mr. Lambert asked Sergeant Blowers:

Mr. Lambert, did you put the alcohol in your report during the time of the incident? **Sgt Blowers** No, only the other officers in their supplements.

Respondent called witnesses

Mr. Vagovic called Ms. Tran (his client) as a witness for questioning:

Mr. Vagovic When did she purchase the property? **Ms. Tran** January 2023

Mr. Vagovic, who did you purchase the property from? **Ms. Tran** Can't remember the previous owner. **Mr. Vagovic** The lease agreement was in place; was she one of the original lessors to the agreement over when you purchased it? **Ms. Tran** advised she just took the agreement over. **Mr. Vagovic** Have you ever met the tenants in person? **Ms. Tran** Summer 2023 **Mr. Vagovic** Do own a business or ownership interests? **Ms. Tran** No **Mr. Vagovic** asked does she remember the last hearing discussing the eviction process and has it been filed? **Ms. Tran** Yes, on the discussion and the eviction has started. **Mr. Vagovic** What stage of the eviction? **Ms. Tran** Waiting on the court hearing **Mr. Vagovic** Do you still want to evict the current tenants? **Ms. Tran** Yes **Mr. Vagovic** Have you had contact with the City of Daytona Beach officials with regard to Land Development permits for the property? **Ms. Tran** Not since the last hearing. She only spoke with Mark (Code Enforcement Supervisor) **Mr. Vagovic** when you purchased the business what was your idea/understanding of what the business supposed to be or did, they tell you? **Ms. Tran** No. **Mr. Vagovic**, did you know it was supposed to be a nightclub, social club, or anything else? **Ms. Tran** From what the tenant told her it was a non-profit for social. **Mr. Vagovic** Have you ever discussed with the tenants regarding pulling the Land Development permits the buildout the city's claiming is required? **Ms. Tran** No sorry I just acknowledged that with Ms. Rose earlier. **Mr. Vagovic**, did anyone ever tell you that you need to get these permits for the development of the building? **Ms. Tran** No. **Mr. Vagovic** asked if Mr. Tran has any personal knowledge, has she ever been to the Social Daytona location at night or seen how they are operating it? **Ms. Tran** advised back in summer, she didn't see any customers in there yet, it's pretty late and she stopped by there for like an hour and then left. **Mr. Vagovic**, are you trying to do everything in your power to get the tenants out of the building? **Ms. Tran** correct. **Mr. Lambert** had no questions. **Mr. Jackson** advised he had questions. **Mr. Jackson** Have you only been to the business one time? **Ms. Tran** Yes **Mr. Jackson**, where do you live? **Ms. Tran** Texas **Mr. Jackson**, have you owned the business for more than a year? **Ms. Tran** Yes **Mr. Jackson**, have you had communication in the summer as well as in the fall regarding the issues? **Ms. Tran** discussed her first interaction with the city was with code department with Inspector Alderman in the summer and that she has to fix the issues regarding the building and then in the fall for the issues regarding the late night & alcohol. **Mr. Jackson** asked if Ms. Tran received rental payments? **Ms. Tran** confirmed she had received payment from them. **Mr. Jackson** When was the eviction filed? **Ms. Tran** advised when she reached out to Attorney Vagovic for help with the eviction. **Mr. Jackson** asked if she remembered the date. **Ms. Tran** in February did not remember the date.

Mr. Vukelja asked Ms. Tran:

Mr. Vukelja asked how much the tenants pay every month. **Ms. Tran** Last year it was \$2,650 per month in 2023. **Mr. Vukelja** asked if that was what they are currently paying her per month. **Ms. Tran** advised the current rent payment per month is \$2,775 but she hasn't accepted rent since February since asking them to leave the premises.

Mr. Vukelja asked Ms. Tran & Mr. Vagovic:

Mr. Vukelja When was the eviction filed: **Mr. Vagovic** February 28, 2024 Judge Sanders.

Mr. Vukelja Where does it stand at present? **Mr. Vagovic** They are trying to schedule the final hearing, Mr. Papis came on for the tenants about three and a half weeks ago, he filed a notice of appearance, so they are all in the process now of scheduling the final hearing he believes Mr. Papis indicated he had some scheduling conflicts obviously though there entitled to summary procedure, so he is trying to get them to hearing within the next week or two.

Mr. Vukelja When do expect to get rid of possession? **Mr. Vagovic** Unsure, conservatively a month, that sounds far out especially with summary procedure but hopes withing a month. **Mr. Vukelja** Who has appeared for the tenant for the eviction processing's? **Mr. Vagovic** Mr. George Papis. *Discussion on who and when the appearance of the eviction for the tenants.*

Mr. Vagovic confirmed March 19, 2024 notice of appearance was filed. **Mr. Jackson** asked if the tenant had paid some money into the court registry. **Mr. Vagovic** confirmed.

Mr. Lambert called **Mr. Richard Jacob** as a witness for questioning:

Mr. Richard Jacob, Owner of the Social Daytona, sworn in. *Mr. Jackson asked, and it was confirmed, Mr. Jacob is the owner of Social Daytona Inc.* **Mr. Lambert**, Are there any other owners of the property? **Mr. Jacob** No. **Mr. Lambert** When was the property formulated or accepted by the state? **Mr. Jacob** May 2023. **Mr. Lambert** was it for the address on Seabreeze. **Mr. Jacob** yes 631 N Grandview. **Mr. Lambert**, is that the first time you have rented the property? **Mr. Jacob** advised he has been a tenant at the property in 2022 for the last landlord. His business was a Hookah Lounge in March 2023. After the city passed the ordinance in April 4 2023 the business had to close. He was closed from April 4, 2023 to June 14, 2023 to get all permits which they have the city has asked. **Mr. Lambert** What was your cooperation formulated for? **Mr. Jacob** for recreational and pleasure **Mr. Lambert** Has it been altered or changed? **Mr. Jacob** Never **Mr. Lambert** When did the issues with the city first surface? **Mr. Jacob** When he approached the city project manager for the after hour permit. The city told him that you do not need an after hour permit if you do not serve alcohol. He noted that Sgt. Blower told him he could keep it on the shelf as long as he didn't sell it (stock from the Hookah Lounge) had a sign on the wall not for sale decoration purpose and that is what they got, what they claim with a whole lot of alcohol on September 17,2024. That's the day they started to have the problem with the city, until the current time. **Mr. Lambert**, was he present during the incident on March 9th, 2024, and was he familiar with the undercover operations? **Mr. Jacob** Yes, they took the ID's, and they paid \$50 fee to come in the business. He has a hookah license under his previous name of Sun and Jack LLC and now has changed the LLC under the Social Daytona Inc name. He does not hold a license for tobacco, but he does charge the membership fee and they have more than anything that can show that what they are serving is not liquor. And they came in and did make the purchase knowing that they had the cameras as what the Lt. was saying, they did see the camera on their phone, and they did serve them what they have but it's not what they claim it's an alcohol they serve them not-alcohol. **Mr. Lambert**, do you charge when you serve them? **Mr. Jacob** No they don't. **Mr. Lambert**, the serving of anybody in there for a drink, is it an alcoholic beverage. **Mr. Jacob** advised it was not **Mr. Lambert**, asked what is it? **Mr. Jacob** advised it's a Non-alcoholic, zero proof its more fermented than the liquor, if you go by the smell (He has evidence present) may be like alcohol, but it is not illegal alcohol. **Mr. Lambert** asked if these are the bottles that are being served and mixed? **Mr. Jacobs**, yes, they do not have alcohol. It's zero proof. They still have everything that they have served each and every time the undercover has come. They can test it there's no zero alcohol in there if you have a test kit. It smells like Fireball, smells like Tequila, that is what they came up with a new business idea in this location and these people don't want them there, that's what is happening to be honest.

Mr. Vukelja asked **Mr. Richard Jacobs** a few questions:

Mr. Vukelja So, did you think you could experiment with this and not notify anyone in advance?

Mr. Jacobs advised he has emails communicated with the city regarding an after-hour permit. The city responded that he does not need an after-hour permit if they are not serving alcohol. This is not alcohol this is non-alcohol beverages. **Mr. Vukelja**, are you open after 3am? **Mr. Jacobs** Yes, on particular days due to some events that people reserve the spot for. These events are for up to 25 to 30 people only. **Mr. Vukelja**, what is your closing time? **Mr. Jacobs**,

they do not have a specific time to be closed based on there is no judgement of a closing time. **Mr. Lambert** asked if that was explained to him by one of the city personnel? **Mr. Jacobs** advised yes; it is clearly explained. Smell test done in the hearing by the special magistrate and the city attorney. **Mr. Jacobs** advised he is trying to use the new kind of business when there is an option as they say it's a land of opportunity, he's trying to take any opportunity that he could.

Mr. Lambert called Mr. Richard Jacob as a witness for questioning:

Mr. Lambert Where are you from: **Mr. Jacobs** South India. **Mr. Lambert**, how long have you been in this country? **Mr. Jacobs** 10 years **Mr. Lambert** when they did search the business all they did was pour out the juices? **Mr. Jacobs** correct, and he does have the receipt for all these which was bought by Mr. Willie, and it was all his personal juice bottles that they flushed, and they do have the juice bottles with them it wouldn't even smell like alcohol they never washed it nothing they just kept it in a black bag just in case if it helps the case. **Mr. Lambert**, how many times have you been arrested? **Mr. Jacobs** 4x **Mr. Vukelja** asked for the bottles again. **Mr. Lambert** Do you have other bottles at the business location? **Mr. Jacobs** Yes, **Mr. Lambert** of the same manufacturer. **Mr. Jacobs** Yes, they keep the bottles, but they are scared that LEO may flush it. They were very expensive.

Mr. Vagovic asked Mr. Richard Jacob a few questions: (Ms. Tran is the landlord)

Mr. Vagovic, Does Ms. Tran have any ownership in the Social Daytona or Sun and Jack LLC?

Mr. Jacobs No **Mr. Vagovic** Does Ms. Tran participate in any way in the operation of the business? **Mr. Jacobs** No

Mr. Jackson asked Mr. Richard Jacob a few questions:

Mr. Jackson Who is Sunu Kumar? **Mr. Jacobs** business partner. He owns half of the business. **Mr. Jackson** stated he thought Mr. Jacobs said he was the sole owner. **Mr. Jackson** presented a communication from Mr. Kumar & the city and would like to introduce this to the magistrate and subsequently he will bring up the manager that handles this aspect, but this is communication of what this business is and what they're trying to do. What he is handing them is not really consistent with what he (Mr. Jacobs) is describing at the moment.

Mr. Jacobs is pretty sure unless you visit my private club, which is a social club, you will not understand how his business operates. **Mr. Jackson** asked, "you did say it's for recreation and pleasure right"? **Mr. Jacobs** confirmed. **Mr. Jackson** asked if these are the same bottles, you have been having these since February 2023, you presented to the magistrate that's an example of the bottles from that point, that have been being calling alcohol and alcohol and tobacco has been calling alcohol that's his testimony? **Mr. Jacobs** confirmed correct. And asked did you mention February of 2023? **Mr. Jackson** confirmed that. **Mr. Jacobs** advised that since they were a hookah lounge till April 4, 2023. **Mr. Jacobs** advised since September 17th, 2024 as he said earlier when they executed the first search warrant, they did recover a lot of liquor, beer unopened bottles of wine which was displayed on the bar because they used to be a hookah lounge and Sgt. Blowers told him he can keep as long as you don't have a sale you can keep it for decoration just mention it on the bar, it's still there. They came with the search warrant they recovered the ABT recovered those evidences after that, ever since that he took the advice from his lawyer not to have the liquor and they have been established as a business there for almost on and a half years before they changed to a private club so they used that opportunity to come around in a different way to keep the business alive and this is what they've been serving ever since then. And they do have Cava if you are aware about what Kava is. **Mr. Jackson** advised he has no more questions.

Mr. Vukelja asked Mr. Richard Jacobs a few questions:

Mr. Vukelja advised it was Mr. Jacobs testimony there was no alcohol on the premises on March 9, 2024? **Mr. Jacobs** correct. **Mr. Vukelja**, were you on the premises on March 9, 2024?

Mr. Jacobs Yes **Mr. Vukelja** Did you see the police look and examine the bottles? **Mr. Jacobs** Yes, on the cameras. He was handcuffed. **Mr. Vukelja** All the products that LEO smelled, he is testifying that they are non-alcoholic? **Mr. Jacobs** Correct.

Mr. Jackson asked **Mr. Richard Jacob** a few questions:

Mr. Jackson What was mixed in the bottles mixed these products, that **Mr. Jacobs** advised they never mixed alcohol in the juice bottles, they don't have to. **Mr. Jackson**, so that's untrue. **Mr. Vukelja** that wasn't his question, answer his question. **Mr. Jackson** repeated the question; he said that your testimony is that whatever was mixed in these bottles was this stuff here. They said something was mixed in the bottles. And when I say this stuff, he is talking and pointing towards the item that (**Mr. Jacobs**) presented as the non-alcohol items. **Mr. Jacobs** advised there was no alcohol in the juice bottles. **Mr. Jackson** confirmed he is testifying that the only thing in those bottles was juice, nothing else.

Mr. Vukelja asked **Mr. Richard Jacobs** a few questions:

Mr. Vukelja So, the juice bottles did not even have these products (referring to the non-alcohol bottles presented as evidence)? **Mr. Jacobs** No, the non-alcohol zero proof liquid is sold under the bar that they serve. **Mr. Vukelja**, so these products would not have been mixed with any **Mr. Jacobs** no they mix the juice with that they pour this they pout the juice with that, that's it. that's what's being served in a cup. **Mr. Vukelja**, so are these products mixed with anything at all? **Mr. Jacobs** advised no not at all they are mixed with the juice what they have which they carry cranberry, Sunny D, all those. **Mr. Vukelja** advised he must not be understanding something are these products poured in a cup with any other ingredient and served to patrons? **Mr. Jacobs** yes. **Mr. Vukelja** so if you had patrons on March 9th drinking Sunny Delight or cranberry juice whatever if it was mixed with anything it was mixed with one of these products? **Mr. Jacobs** correct. **Mr. Jackson** asked **Mr. Jacobs** for clarification though you're also saying that none of this stuff was poured in any of those juice bottles? **Mr. Jacobs** advised No. **Mr. Jackson** okay so there's nothing other than juice in the juice bottles? **Mr. Jacobs** correct. **Mr. Lambert**, the five bottles that are up there right now are they all the ones that were at your place that evening or are there others? **Mr. Jacobs** there's others.

Mr. Jackson recalled **Lieutenant Gernert** for questioning:

Mr. Jackson, is it your testimony regarding the alcohol which you feel you tested and verified this of alcohol, what is your response to what was in the bottles and what were you talking about in the bottles or were you talking about cups of drinks? **Lt. Gernert** advised when they executed the search warrant in September they did recover a lot of alcohol, cases of beer unopen bottles of various liquors, wines. Yes, some of that was behind the bar on the wall, some of that was in a locked cabinet under the bar and a lot of it was in a secured locked storage closet, that they had to open to recover and remove from the property if they changed their business model back in April and they didn't open until June they never removed any of the alcohol but they also sold alcohol to undercover officers to include beer back in September at any time during her search warrants none of that kind of bottle, brand anything was recovered in any search warrant and does not recognize any of it, doesn't recognize the labels the brand names, doesn't recognize any of it from the September one, the February or January, February or March and the March search warrant none of those bottles were there under the bar or behind the locked cabinet that they use for securing their liquor under the bar. **Mr. Jackson** advised she spoke of juice bottles and either by odor or taste and her testimony was that she smelled or tasted alcohol and asked her to tell him more about that as it relates to this, did she smell alcohol in those bottles **Lt. Gernert** advised yes, she did. **Mr. Jackson**, did you taste alcohol? **Lt. Gernert** advised she did not drink that she was on duty. **Mr. Jackson** confirmed this was totally from smell and her experience. **Mr. Jackson** and **Lt. Gernert** discussed the confirmation, being also confirmed by the undercover officers that consumed

the alcohol that they purchased and Lt Gernert having the experience of recognizing alcoholic beverages.

Mr. Lambert asked Lieutenant Gernert questions:

Mr. Lambert asked if she reviewed the 707's on the individuals that were arrested on the 9th?

Lt. Gernert Yes, **Mr. Lambert** did any of them indicate in them that there was anything with alcohol in it found on the premises? **Lt Gernert** advised she did not recall or remember what the affidavit read and that she would have to review it. **Mr. Lambert** asked if she had reviewed it. **Lt Gernert** confirmed that she had. Sgt Blowers completed this arrest report, and she reviewed it before he submitted it for the system, at no during any of these search warrants or contacts with anybody related to this business did they mention anything about utilizing that kind of liquid that they would be serving any of their customers. (nonalcoholic beverages) **Lt Gernert** was handed a 707 from Mr. Lambert and she read "it says the officers approached the front door were asked to pay a \$50 cover charge which included alcohol and hookah to enter the business once they paid the funds issued to them from the department, they were given access to the business where they went to the bar and they both ordered drinks. They consumed the drinks. The alcoholic one ordered cranberry vodka and the other orange juice with vodka from a co-owner Neil Daukar which she hopes she is saying it correctly. They both consumed the alcohol and recognized it through their experience and after 20 minutes they both left the business and then they entered the business to execute the search warrant. **Mr. Lambert** asked in the execution of the search warrant was there any notice that there was alcohol on the premises? He recognizes the allegation of the sale of alcohol but when they executed the search warrant is there any report that indicates that they found alcohol there? **Lt. Gernert** advised in a supplement there would be yes, she completed a supplement later, she doesn't remember if it was the next night or a couple nights later where she did the supplement based on her review of the video from live and then from what they recovered during the search warrant. **Mr. Lambert** advised in the inventory is presented to the judge after she executes a warrant and its an inventory receipt. **Lt Gernert** advised that was correct. **Mr. Lambert** does that look like what was toyed with **Lt Gernert** Yes, that looks like what we recovered. **Mr. Lambert** Does anywhere on there, and you recovered it what'd you do with it? **Lt. Gernert** they had to pour it out because its alcohol and it was open they couldn't tag it. **Mr. Lambert**, where does it mention alcohol in any of this? **Lt. Gernert** it doesn't say anything about it being alcohol. **Mr. Lambert** correct there's one, two, three, four, five, six. No mention of alcohol. **Lt. Gernert** agreed. **Mr. Vukelja** asked how are these items described, what's listed? **Mr. Lamber** advised that they just say Sunny D bottle, orange, cranberry bottle, Ocean spray cranberry, empty containers of garbage. Dole ruby red grapefruit. **Mr. Jackson** asked if her narrative included that they seized alcohol? **Lt. Gernert** advised yes. **Mr. Jackson** asked if she was monitoring when the undercover went in, right? **Lt. Gernert** advised yes. **Mr. Jackson** and you've checked videos even after the fact? **Lt. Gernert** advised yes. **Mr. Jackson** stated that her report says that when you paid a cover charge it included alcohol, is that what they said? **Lt. Gernert** doesn't recall if that was exactly what was said on the video but as they went into the business, they went to the bar to pay for the alcohol that they ordered and they were not, their money was not accepted at the bar. **Mr. Jackson** And they ordered alcohol they didn't order substitute; they didn't order Kava they ordered alcohol. **Lt. Gernert** they ordered cranberry in vodka and orange juice in vodka. **Mr. Jackson** and it was served what was alcohol from their report **Lt. Gernert** from what they observed. **Mr. Vukelja** asked Lt Gernert if he is to understand her testimony nothing like this was found referring to and (pointing to the non-alcoholic Beverage bottles presented) **Lt. Gernert** advised she has never seen those on premises ever no sir not even during the search warrant in March. **Mr. Vukelja** asked for confirmation on a picture and received a better copy that Lt. Gernert shared with the

council and advised if she remembered correctly it was found under the DJ booth on the search warrant in January. It was a half full bottle they had to pour it out.

Mr. Lambert asked Lieutenant Gernert questions:

Mr. Lambert Did she discuss this with the owner? **Lt. Gernert** No

Mr. Lambert did they ask them where it was what was the alcohol for? **Lt. Gernert** No

Lt. Gernert under the city ordinance for the afterhours permit if they're going to have alcohol on property, they're responsible for what occurs on their property so if somebody brought in a bottle of alcohol, they're required to ensure its no longer on property or that nobody brings it on property **Mr. Lambert** does that apply to everybody? **Lt Gernert** it applies to anybody that has an after-hours permit that's selling alcohol. **Mr. Lambert** and he doesn't have an after hour permit **Lt Gernert** No he doesn't **Mr. Lambert** advised they are contesting that whether or not he sells alcohol. **Mr. Jackson** asked to discuss the city statue of 10.1. - Prohibited from the sale of alcohol. **Mr. Jackson** advised he wanted to make it clear when, this is a legal statement if he may Mr. Vukelja if you would look at the law that he gave him 10-2 or 10-1 in those definitions it defines and establishment selling alcoholic beverages and it doesn't have anything to do with whether or not their licensed in fact it includes a bottle club which isn't even authorized or lawful is expressly prohibited in the city of Daytona Beach.

Mr. Lambert asked Lieutenant Gernert for questions:

Mr. Lambert, your search of the building is all that on axon? **Lt Gernert** Yes **Mr. Lambert** asked if she does know if the entire building was searched **Lt Gernert** **their portion of the building was searched the other half of that building is a pizza shop and her search warrant did not include that and were there any doors locked?** **Lt Gernert** No, not to her recollection. In the first search warrant there was. Every time the units go to present a search warrant the owner locks the doors. It takes them five minutes or more to get them to come to the door and unlock it, they prevent them from coming in with a legal lawful search warrant. They were able to go in after several minutes of banging on the door yelling a search warrant.

Mr. Lambert That would have been recorded as well? **Lt Gernert** absolutely, on any of the officer's axons that were working with them in that execution.

Mr. Jackson asked Lieutenant Gernert a few questions:

Mr. Jackson, Were there patrons inside during the locking of the doors? **Lt Gernert** Yes

Mr. Jackson How do you conclude they were patrons? **Lt Gernert** They were customers within the business and weren't employees to her knowledge. **Mr. Jackson**, were they utilizing hookahs or drinks? **Lt Gernert** here have been times that active hookahs have been on the tables and alcohol.

Mr. Vukelja asked what is the second case he has? **Mr. Jackson** advised it could have been consolidated with his one, the only thing different about the second case is the business open after hours without an after hour license and its only based on what was only cited against the business owner not against the tenant. **Mr. Vukelja** asked what the second case is about. **Mr. Jones** confirmed it was about selling alcohol or consuming or having it on premise. All the city is asking for in this case because it is a repeat violation from January 27, 2024 for SMG 01-24-17 On January 9th he found this business in non-compliance compliance with a will fine. And seeking today is just recommendation for a fine of \$1000.00 for repeat violation. The same March 9th event. **Mr. Vukelja** advised following the imposition of the last fine the property owner commenced eviction proceedings, so what remedial measures does the city contend the property owner has failed to pursue or explore given the last fine that they were subjected to, in other words what else does the city expect the property owner to be able to do to be able to do to rid themselves of an allegedly troublesome tenant beyond commencing eviction proceedings. Because of course they can't indulge in any self-help. **Mr. Jones** advised this was

discussed when this violation was presented and conversations he had with Ms. Tran back in January, that is when she stated she was going to start the eviction proceedings and she had not. Discussion on getting the will fine and not getting fined for this case. discussion on how Ms. Tran started the eviction process and getting fined in February. Mr. Vukelja advised that if the city is requesting, he fine the owner and he is supposed to take into consideration any ameliorating circumstances, what has the owner failed to do that warrants fining the owner or has she done everything that can reasonably be expected of her. Mr. Jackson advised the order was in place February 10th and it wasn't until the end of the month February 28th that anything was filed. **Mr. Vukelja** advised that it was still filed before the event were here on now. **Mr. Jackson** agreed and advised they just wanted him to know it took quite a period of time. **Mr. Vukelja** asked again what is the relief that's currently being sought against the property owner? **Mr. Jackson** the inspector indicated as to the second case a fine of \$1000.00 dollars **Mr. Vukelja** advised that's denied. **Mr. Jackson** as to the first case \$15,000.00 as to both parties. **Mr. Vukelja** stated that was because of the March 9th event? **Mr. Jackson** confirmed the March 9th event. **Mr. Vukelja** denied case one as to the property owner as well.

DISPOSITION: Mr. Vukelja denied the fines the city is looking for from Ivan & Cardin, LLC (property owner)

Mr. Vukelja advised if he finds out that eviction proceeding hasn't run its course then she may find herself back here. Mr. Vagovic confirmed they will do their best to get it resolved before they have to come back.

CASE # 2 - SMG 04-24-81 - Ivan & Cardin LLC & Tammi Tran is cited for failure to correct violations of The Land Development Code, Art. 10 Sec. 10-3 Hours of sale and consumption, at 631 N Grandview Ave. Violation(s) – Business open after midnight without an after-hour license. First Notified – 1/9/2024.

Closing:

Mr. Vukelja advised that he did not need a history lesson and he is aware of the respondent's knowledge of the violations and the prior findings and wanted the closing to be in regard to the March 9th event moving forward. **Mr. Jackson** explained the situation and why they should be fined. The evidence presented with witnesses shows that this business keeps operating with the violations. The violations from the respondents, other businesses are complaining. Request a fine in the amount of \$15,000.00. **Mr. Vukelja** confirmed the statement made with regard to if they were in fact a social club not serving alcohol they could open or close whenever they wanted. If they are serving alcohol they have to comply with the state and local ordinance.

Mr. Lambert advised he relates back to a definition of insanity doing the same thing over and over again thinking the results going to be different. They've been arrested four times, to him the biggest problem with this, he knows that former rules of evidence don't apply but due process does apply, in the issue of willful destruction of evidence. So law enforcement has been going after them relentlessly with regard to this, what they may want the building for he has no idea but they've been going after him constantly and with that one would think they would want to preserve the evidence so that they would actually have the proof the spoliation applies both in civil cases and criminal cases and now there's nothing but an officer's word for us to go back on when you saw in the, well you didn't but you heard of the bottles. So, there were numerous bottles, it is nothing to preserve them, put them in a refrigerator, they have refrigerators at the police department and that way it would back up their defense, but now they don't now they just have

to rely on an officer saying I smelled alcohol. **Mr. Jackson** explained that there is a state statute and code statute that states that the identification and the proof of alcohol has been by someone with actual knowledge of an alcoholic beverage what they smell like what it tastes like to be able to say this is an alcoholic beverage that's been sufficient in the state statute on chapter 562. 12 or 14 he would have to check, and they pretty much reflect that in the city ordinance as well under the section 10-3 (he believes) so it's not spoliation issue when they're able to present evidence as required and with the expressing it as the sufficiency of evidence under the law to make that determination by smell and observation in many occasions. **Mr. Vukelja** asked if there are criminal evidentiary rules statutes or cases that say an officer's testimony regarding the presence of alcohol suffices to establish its existence? **Mr. Jackson** Yes, and it's clearly established in the code, but the main thing is where someone is drinking from a cup you're not going to try and save alcohol. Unlawful use, possession of alcohol is not preserved by hanging on to previously open alcoholic beverages. **Mr. Lambert** agrees that statute exists, and its application is primarily for underage kids with a red cup also goes up smells it gives them a citation for it. The magnitude of this case there so much they're saying its alcohol in these juice bottles that they would want to preserve it. **Mr. Vukelja** referred to the two of them combined, are catching a fish out of water. Because the two of them know more about what you're talking about than he does. He is inclined to accept the officer's testimony. Discussed the officer's testimony evidence, spoliation and requested they both submit in the next 10 days whatever they want for him to consider in the way of a closing argument for him to review and then he will make the decision. If he finds against the respondent, he will be fined \$15,000.00. **Lt. Gernert** confirmed per the police directives the policy for not being able to keep the alcohol and the police department does not have refrigerators for that. **Mr. Vukelja** confirmed that he heard that and understood that information and discussed **Mrs. Reno** asked the special magistrate to confirm If she needed to continue today or do nothing. **Mr. Vukelja** confirmed whatever his decision will be just to let everyone know he will be communicating his decision to the secretary and the secretary would be generating the standard order regardless of what the outcome may be, and that will be the process

DISPOSITION: no order at this time Continued for 10 days to provide burden of proof and order will be generated at that time.

Adjournment: 4:10 pm

IT IS HEREBY ORDERED as follows:

1. No fine or lien is imposed against Respondent, **Ivan & Cardin, LLC ("Property Owner")** in this instant case, **SMG 04-24-80**.
2. Respondent, **Social Daytona Inc, ("Tenant")** shall pay to the City of Daytona Beach a lien in the amount of **Fifteen Thousand (\$15,000.00) Dollars** for irreversible and irreparable violations of City Land Development Code violation of **Art. 10 Sec. 10.2.B.2** by **occupying or using land or a structure without first obtaining all appropriate development permits.**