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# City of Daytona Beach Special Magistrate

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

**Robert J. Riggio, Special Magistrate**

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## June 25, 2024 Minutes

Attendees:

Robert J Riggio, Special Magistrate

Staff present:

Mr. Brandon Byers, Assistant City Attorney

Mr. Mark A Jones, Field Supervisor

Officer Laurie Bird, Daytona Beach Police

Mr. Kevin Yates, Rental Inspector

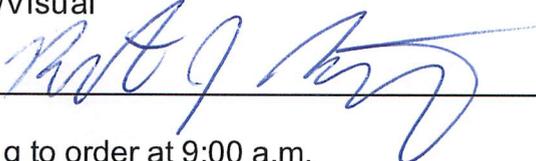
Mr. Karl Wexelberg, Rental Inspector

Mr. Clifford Recanzone III, Rental Inspector

Ms. June Barnes, Board Secretary

Mr. Joe Graves, Audio/Visual

Mr. Xavier Campbell, Audio/Visual

Approval of Minutes by:  Special Magistrate

Mr. Riggio called the meeting to order at 9:00 a.m.

Mr. Riggio asked for announcements and there were none.

Mr. Riggio approved the minutes of the May 28, 2024 meeting.

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

Mr. Riggio announced the procedure for the meeting and called the first case.

**CASE # 1 - RTL 05-24-48 - Heidi Castillo** is cited for failure to correct violations of City Code Ch. 26 Sec. 26-294, at **439 Auburn Dr #202**. Violation(s) – Failure to obtain Rental License (RTL). First Notified – 4/3/2024.

Respondent was not present.

Inspector Clifford Recanzone stated he notified the owner of the property on April 3, 2024 and has had no contact. He stated there has been no movement in obtaining the license and he is requesting a fine in the amount of \$100 per day to a maximum of \$15,000. He stated he has a copy of the lease, and the tenant was there when the property was posted.

**DISPOSITION:** The Special Magistrate imposed a fine in the amount of \$100 per day, effective June 25, 2024 until Compliance is achieved, or the fine reaches the maximum amount of \$15,000.00.

**CASE # 2 - RTL 05-24-39 - Sarwat Khan** is cited for failure to correct violations of City Code Ch. 26 Sec. 26-294, at **1508 Virginia Ave #206 (Parcel ID: 5340150A2060)**. Violation(s) – Failure to obtain Rental License (RTL). First Notified – 2/14/2024.

Respondent was not present.

Inspector Karl Wexelberg stated the case was field generated. He stated the Respondent was first notified on February 14, 2024 and he has posted the property multiple times. He stated the property was still in Non-Compliance at the last posting. He stated he has had no contact with the owner, the property is not currently occupied, and is asking for a fine in the amount of \$100 per day to a maximum of \$15,000 or until Compliance is achieved.

**DISPOSITION:** The Special Magistrate imposed a fine in the amount of \$100 per day, effective June 25, 2024 until Compliance is achieved, or the fine reaches the maximum amount of \$15,000.00.

### **NEW CASES: IRREPARABLE/IRREVERSIBLE**

**CASE # 3 - RTL 06-24-52 - Claude Auger** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **167 Congress Ave**. Violation(s) – Zoning violation - the property is zoned MFR-20. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 5/16/2024.

Mr. Claude Auger appeared via Zoom and was sworn in.

Inspector Kevin Yates stated the case was field generated and the property is zoned MFR-20. He stated he first observed the violation on May 16, 2024 and notified them the same day. He stated the advertising stopped as of May 22, 2024. He stated the website shows a daily rate of \$169, 1 review, check in at 3:00 pm and check out at 12:00 pm. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Mr. Auger stated he was guilty of renting it. He stated he returned to Canada for the summer and put it on Airbnb. He requested that the Magistrate waive the fees since this was a first-time offense.

Mr. Brandon Byers presented the City's argument as to why the fine should be found to be irreparable and irreversible in nature and per Chapter 62 would be permitted to ask for a higher fine of \$15,000 per occurrence.

**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 imposed a one-time fine in the amount of \$1,000, 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 that the property is in Compliance as of May 22, 2024.

**CASE # 4 - RTL 06-24-53 - Mario E Diaz III** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **423-421 Braddock Ave.** 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 – 5/22/2024.

Mr. Marino E Diaz came forward and was sworn in. He explained that there was an error on the title with his name.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 22, 2024 and notified them the same day. He stated the advertising stopped as of May 24, 2024. He stated the website shows a daily rate of \$91, 5 reviews, check in at 3:00 pm and check out at 11:00 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Mr. Diaz waived repetition of Mr. Byers irreparable/irreversible argument and had no objection to incorporating it into the record as to the nature of violation. He stated he delisted the advertising on May 24<sup>th</sup>, 2024 and it was a mistake. He stated he wasn't aware he would be in violation. He stated he was going through a hard time and has received food assistance for children and families based on an interview. He stated he has communicated with US bank regarding the mortgage and received an unemployment forbearance plan term agreement to bring his account current to avoid foreclosure.

Mr. Brandon Byers explained that the plan allows the Respondent to pay at a later time without penalty and the next step could be foreclosure.

**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 imposed a one-time fine in the amount of \$500.00, 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 May 22, 2024.

**CASE # 5 - RTL 06-24-54 - Gary A Stewart & Shuana L Thompson** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **1312 Mardrake Rd.** 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 – 5/17/2024.

Mr. Alindo Spence came forward and was sworn in. He stated he was a friend of Mr. Stewart.

Mr. Riggio asked if he had authorization from Mr. Stewart to speak on his behalf and he stated yes.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 17, 2024 and notified them the same day. He stated the advertising stopped as May 24, 2024. He stated the website shows a daily rate of \$250, 3 reviews, check in at 3:00 pm and check out at 11:00 am. He stated the violation is irreparable and irreversible in nature and is asking for a one-time fine in the amount of \$1,000.

Mr. Byers asked the Respondent if he agrees to introducing his previous irreparable and irreversible argument into the record and Mr. Spence agreed.

Mr. Riggio stated he would incorporate Mr. Byers argument of irreparable and irreversible violation into the record.

Mr. Spence stated initially the property was an assisted living facility and that the expenses were \$5,200 a day. He stated a sober living facility did not do well. He stated they spoke to the HOA, and they said it would be ok in order to deal with the mortgage. He stated they had two units occupied which were relocated, and he stated he stopped advertising the same day he received notice.

Mr. Riggio asked Mr. Byers if there were provisions in the Florida Statutes regarding group homes.

Mr. Byers stated in this case he did not know but there were zoning violations against renting short-term which is what the Respondent was doing.

Mr. Riggio agreed that even if they did not rent the property, the short-term advertising was a violation.

Mr. Yates stated there is still the concern of short-term renting being transient housing and explained the process which includes obtaining a state license.

**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 imposed a one-time fine in the amount of \$1,000.00, 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 May 24, 2024.

**CASE # 6 - RTL 06-24-55 - Janaka Siriwardena & Udara Perera** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **930 School St.** 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 – 5/30/2024.

Mr. Jana Siriwardena & Ms. Udara Perera came forward and were sworn in.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 30, 2024 and notified them the same day. He stated the advertising stopped as May 31, 2024. He stated the website shows a daily rate of \$162, 4 reviews, check in at 3:00 pm and check out at 11:00 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Mr. Byers asked the Respondent if he agrees to introduce his previous irreparable and irreversible argument into the record.

Mr. Riggio stated the nature of the violation as irreparable and irreversible allows the City to request a penalty up to \$15,000 per occurrence.

Mr. Siriwardena agreed.

Mr. Riggio stated he would incorporate Mr. Byers argument of irreparable and irreversible violation given in Case # 3 into the record.

Mr. Siriwardena stated they live in Maryland and were not aware of the zoning. He stated when they purchased the house, the realtor, and the Zillow listing, stated the property was good for long or short-term rentals. He stated he employs the neighbors to clean the house and mow the grass. He stated he is not advertising anymore and asked if he could just receive a warning.

Mr. Riggio stated that setting up a business without obtaining the necessary licensing and permissions, avoiding taxes, including the County's bed tax, means a full fine could be imposed.

**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 imposed a one-time fine in the amount of \$1,000.00, 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 May 31, 2024.

**CASE # 7 - RTL 06-24-56 - Danielle Heatherly McClarty** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **885 Derbyshire Rd.** 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 – 5/31/2024.

Ms. Danielle McClarty came forward and was sworn in.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 31, 2024 and notified them the same day. He stated the advertising stopped as of May 31, 2024. He stated the website shows a daily rate of \$285, 7 reviews, check in at 4:00 pm and check out at 11:00 am. He stated the violation is irreparable and irreversible and is asking for a fine in the amount of \$1,000.

Mr. Byers asked the Respondent if he agrees to introduce his previous irreparable and irreversible argument into the record.

Ms. McClarty stated she heard and agrees to including the argument in the case. She stated she started the Airbnb to be able to make repairs to the home but didn't know about the zoning. She stated she has applied for a long-term license to do it the right way. She stated she started renting the property at the end of January.

**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 imposed a one-time fine in the amount of \$1,000.00, 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 May 31, 2024.

**CASE # 8 - RTL 06-24-57 - Salvador Perez Soto & Santos Elizabeth Soto** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **292 Deeley St.** 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 – 5/30/2024.

Mr. Salvador Soto came forward and was sworn in.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 30, 2024 and notified them the same day. He stated the advertising stopped as of June 14, 2024. He stated the website shows a daily rate of \$130, 1 review, check in at 4:00 pm and check out at 12:00 pm. He stated the violation is irreparable and irreversible and is asking for a fine in the amount of \$1,000.

Mr. Soto gave a packet of documents to the Inspector which were then reviewed by the City Attorney and Special Magistrate.

Mr. Byers asked the Respondent if he heard the irreparable/irreversible argument and agrees to incorporate the request into the record.

Mr. Soto stated he did not, and Mr. Byers repeated his argument.

Mr. Soto stated his daughter told him how to do it. He stated he obtained licenses from DPBR and a long-term rental license.

Mr. Byers stated that the City's position is that anyone has the ability to get a license from the state but that doesn't preclude the allowance of short-term use according to City Zoning regulations.

Mr. Riggio stated it does not relieve the obligation to check to see what is allowed.

Mr. Soto stated his daughter applied with Evolve Management and was unable to cancel the agreement without paying a fee. He stated he is good to go on long term for 6 months and 1 day.

Mr. Yates stated that Evolve seeks damages when a contract is cancelled.

Mr. Riggio stated it is not possible to collect on an agreement that is not permitted and that his agreement with Evolve is a different situation.

Mr. Yates told Mr. Soto that he could seek legal advice on that situation.

**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 imposed a one-time fine in the amount of \$1,000.00, 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 June 14<sup>th</sup>, 2024.

**CASE # 10 - RTL 06-24-59 - Del Val Investment Group LLC** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **416 N Peninsula Dr.** 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 – 5/23/2024.

Ms. Lena Millares, part-owner, attended via Zoom and was sworn in.

Inspector Kevin Yates stated the case was field generated and the property is zoned RP. He stated he first observed the violation on May 23, 2024 and notified them the same day. He stated the advertising stopped as of June 6, 2024. He stated the website shows a daily rate of \$69, 2 reviews, check in at 3:00 pm and check out at 10:00 am. He stated the violation is irreparable and irreversible and is asking for a fine in the amount of \$1,000.

Mr. Byers asked the Respondent if she heard his previous irreparable and irreversible argument and she stated she did.

Mr. Riggio stated the <sup>city's</sup> argument is in relation to the violation being irreparable and irreversible and eligible for fine by Statute of the state and, in this case will be incorporated into this matter. He stated if you don't agree with his argument, you will have the opportunity to express that.

Ms. Millares stated she rented the property long term to Priscilla and Josh and that's whose name was on the Airbnb website. She stated she had to prove to Airbnb that she was the owner of the property in order to have it taken down. She stated they did not renew the lease with them for June.

Mr. Riggio asked the Inspector what the basis was for asking for a \$1000 fine.

Inspector Yates stated he had no choice but to hold the owner responsible.

Mr. Riggio stated he believes her.

Ms. Millares stated they own their rental properties in a company name but it's just her and her husband.

There was discussion regarding Mr. Riggio being prone to dismiss the case or impose a fine of \$1 to allow for repeat violation status.

**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 imposed a one-time fine in the amount of \$1.00, 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 June 6, 2024.

**CASE # 9 - RTL 06-24-58 - Romelia Int Corp** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **816 Donnelly Pl.** Violation(s) – Zoning violation - the property is zoned MFR-12. Short term rentals, known as "Other Accommodations" are not a permitted use in the zoning district. First Notified – 5/24/2024.

Respondent was not present.

Mr. Riggio asked if the Repondent received proper Notice.

The Board Secretary stated she has signed certified mail receipts that both the owner and Registered Agent received the Notice of Hearing and Notice of Violation.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 24, 2024 and notified them the same day. He stated the advertising stopped as of May 28, 2024. He stated the website shows a daily rate of \$199, 2 reviews, check in at 3:00 pm and check out at 11:00 am. He stated the violation is irreparable and irreversible and is asking for a fine in the amount of \$1,000.

Mr. Byers repeated the City's irreparable and irreversible argument as to the nature of the violation into the record.

**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 imposed a one-time fine in the amount of \$1,000.00, 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 May 28, 2024.

**CASE # 11 - RTL 06-24-60 - Opulent Home Health Care LLC** is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **1249 Suwanee Rd.** 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 – 5/17/2024.

Respondent was not present.

Mr. Riggio asked if the Respondent received proper Notice.

The Board Secretary stated the USPS still shows a status of Notice Left and not claimed however Inspector Yates posted the Notice of Hearing and Violation at the property, City Hall and mailed to the address on the Volusia Property Appraiser's website.

Inspector Kevin Yates stated the case was field generated and the property is zoned SFR-5. He stated he first observed the violation on May 17, 2024 and notified them the same day. He stated the advertising is still active. He stated the website shows a daily rate of \$192, 5 reviews, check in at 4:00 pm and check out at 11:00 am. He stated this is the second violation for this owner and property, the first being RTL-03-24-32 on March 28, 2024. He stated the violation is irreparable and irreversible in nature and is asking for a one-time fine in the amount of \$15,000.

Mr. Byers repeated the City's irreparable and irreversible argument as to the nature of the violation for the record.

**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 imposed a one-time fine in the amount of \$1,000.00, 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 Not in Compliance.

Mr. Riggio asked for any miscellaneous business and there was none.

The meeting was adjourned at 10:46 am.