
City of Daytona Beach Special Magistrate

City Commission Chambers, 301 S Ridgewood Ave, Daytona Beach, FL 32114

Robert J. Riggio, Special Magistrate

October 22, 2024 Minutes

Attendees:

Robert J Riggio, Special Magistrate

Staff present:

Mr. Anthony Jackson, Deputy City Attorney
Sgt. Timothy Blowers, Daytona Beach Police
Mr. Kevin Yates, Rental Inspector
Mr. Karl Wexelberg, Rental Inspector
Ms. LaWanda Tomengo, 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 1:06 p.m.

Mr. Riggio announced the procedure for the meeting.

Mr. Riggio asked for announcements and there were none.

Mr. Riggio approved the minutes of the September 24, 2024 meeting.

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

Mr. Riggio called the first case.

LR-1

LR-1 - CEB 02-20-39 - 312 Frances Ter - Neil & Cora Hitchman is cited for failure to correct violations of City Code Ch. 26 Sec. 26-294; City Code Ch. 90 Sec. 90-297. Violation(s) – Failure to obtain Business Tax Receipt (BTR), failure to obtain Rental License (RTL). First Notified – 12/10/2019. Order Imposing Fine/Lien in the amount of One Hundred (\$100.00) dollars per day to a maximum of Fifteen Thousand (\$15,000.00) dollars effective October 8, 2020. Compliance = August 16, 2024. Amount due of \$15,000.00 plus \$24.00 recording fees, plus \$1,801.66 interest = \$16,825.66.

Respondent was not present.

Inspector Karl Wexelberg stated the property was brought into Compliance and they have a new Property Manager. He stated he met with the Property Manager and Code Compliance staff and came to an agreement to reduce the fine to \$5,000.

The Board Secretary stated she attended the meeting and the \$5,000 was agreed to by both parties.

NOTE: The Property Manager, Jessica Woodard, appeared at the hearing and spoke to the Board Secretary. She stated she thought the meeting started at 1:30. I told her the Magistrate reduced the amount of the lien to \$5,000 and she agreed and left the meeting.

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 - RTL 08-21-183 - 433 Pelican Bay Dr. - Harpreet Kaur Sodhi & Harbans Kalra is cited for failure to correct violations of City Code Ch. 26 Sec. 26-294. Violation(s) – Failure to obtain Rental License (RTL). First Notified – 3/2/2021. Order Imposing Fine/Lien in the amount of One Hundred (\$100.00) dollars per day to a maximum of Fifteen Thousand (\$15,000.00) dollars effective November 23, 2021. Compliance = June 27, 2022. Lien review in May, 2023 was denied without prejudice. Amount due of \$15,000.00 plus \$24.00 recording fees, plus \$1,438.70 interest = \$16,462.70.

Ms. Harpreet Sodhi came forward and was sworn in.

Inspector LaWanda Tomengo stated Ms. Sodhi submitted new documentation showing that the screens and stove were in fact repaired on multiple occasions before the fine was imposed. She stated she is requesting to reduce the amount of the lien to \$0.

Ms. Sodhi agreed.

DISPOSITION: *The Special Magistrate reduced the amount of the lien to \$0.*

NEW CASES: IRREPARABLE/IRREVERSIBLE

CASE # 1 - RTL 10-24-91 - Pepe L Gaibor is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **265 Columbus 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 – 9/10/2024.

Ms. Rachel Gaibor, daughter of the owner, came forward and was sworn in.

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 this zoning district. He stated he first observed the violation on September 10th, 2024 and notified them the same day. He stated the advertising stopped on September 12th, 2024. He stated the website shows a daily rate of \$111, 1 review, and rules state check in and out at 3 pm and 11 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Mr. Anthony Jackson, Deputy City Attorney, gave his argument as to why the City is requesting to find the nature of these violations to be irreparable and irreversible.

Ms. Gaibor stated she set up the rental to help her father financially and she didn't know it was not allowed.

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 \$1,000, payable within 30 days, be imposed and that the property is in Compliance as of September 12th, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

CASE # 2 - RTL 10-24-92 - Jennifer Uribe & Richard Gariety is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **263 Williams 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 – 9/12/2024.

Ms. Jennifer Uribe appeared via Zoom and was sworn in.

Inspector 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 this zoning district. He stated he first observed the violation on September 12th, 2024 and notified them the same day. He stated the advertising stopped on September 19th, 2024. He stated the website shows a daily rate of \$89, rules state check in and out at 3 pm and 10 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Ms. Uribe waived hearing the City's argument as to why this violation is irreparable and irreversible in nature.

Mr. Riggio explained that if Ms. Uribe takes an exception to anything Mr. Jackson stated she can raise objections to it. He stated Mr. Jackson's statements from Case #1 will be incorporated into the record.

Ms. Uribe stated she had no idea it was not allowed. She stated her neighbor saw the Notice on the door and she called Mr. Yates. She stated she removed the listing and has a long-term rental.

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 \$1,000, payable within 30 days, be imposed and that the property is in Compliance as of September 19th, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

CASE # 3 - RTL 10-24-93 - Sekula & Ashley Jovanovic is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **117 S Halifax Ave.** 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 – 9/18/2024.

Ms. Ashley Jovanovic appeared via Zoom and was sworn in.

Inspector Yates stated the case was field generated and the property is zoned RP. 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 18th, 2024 and notified them the same day. He stated the advertising stopped on October 3rd, 2024. He stated the website shows a daily rate of \$80, rules state check in and out at 3 pm and 11 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Ms. Jovanovic waived hearing the City’s argument as to why this violation is irreparable and irreversible in nature.

Mr. Riggio stated Mr. Jackson’s statements from Case #1 will be incorporated into the record.

Ms. Jovanovic stated she researched and renovated the property to be a short-term rental.

There was further discussion as to the State, Airbnb and County allowing it without knowing what the rules were in individual cities.

Mr. Riggio stated that she was misled. He stated Short-term rentals need a Business Tax Receipt from the City and if she had gone to the Business Tax Office, they would have told her it was not allowed.

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 \$1,000, payable within 30 days, be imposed and that the property is in Compliance as of October 3rd, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.*

CASE # 4 - RTL 10-24-94 - Sergei & Irina Gritsaev is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **273 Lexington Dr.** 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 – 9/20/2024.

Mr. Sergei Gritsaev came forward and was sworn in.

Inspector Yates stated the case was field generated and the property is zoned MFR-12. 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 20th, 2024 and notified them the same day. He stated the advertising stopped on October 18th, 2024. He stated the website shows check-in and out at 3 pm to 8 pm and 11 am. He stated the violation is irreparable and irreversible in nature and normally, since the ad was up for so long after Notice, he would be asking for \$5,000 but Mr. Gritsaev had problems taking the ad down and he is asking for a fine in the amount of \$1,000.

Mr. Gritsaev waived hearing the City’s argument as to why this violation is irreparable and irreversible in nature.

Mr. Riggio explained that if Mr. Gritsaev takes an exception to anything Mr. Jackson stated she can raise objections to it. He stated Mr. Jackson's statements from Case #1 will be incorporated into the record.

Mr. Gritsaev asked if short-term rentals are allowed in the City.

Mr. Jackson stated yes in specific zoning areas.

Mr. Gritsaev stated that it should be allowed or not allowed in all areas and the City is discriminating by only allowing certain properties to short-term rent. He stated the City should get into agreement with Airbnb.

Mr. Jackson explained the city's zoning and Mr. Yates stated he spoke to Airbnb but they are not interested in adjusting their model to match local codes.

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 \$1,000, payable within 30 days, be imposed and that the property is in Compliance as of October 18th, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

CASE # 5 - RTL 10-24-95 - Natasha Katrine Griego is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **121 Flamingo Ave # ETAL**. 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 – 9/25/2024.

Ms. Natasha Griego came forward and was sworn in.

Inspector 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 this zoning district. He stated he first observed the violation on September 25th, 2024 and notified them the same day. He stated the advertising stopped on October 1st, 2024. He stated the website shows a daily rate of \$99, rules state check in and out at 3 pm and 11 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Ms. Griego waived hearing the City's argument as to why this violation is irreparable and irreversible in nature.

Mr. Riggio stated the City's position on the irreparable and irreversible nature of this violation from Case #1 will be incorporated into this proceeding.

Ms. Griego stated she took the listing off that evening. She stated she has Airbnb on her phone showing that she never collected any money. She stated she was negligent in knowing the City's laws but has maintained the integrity of the neighborhood. She asked if she was being fined for advertising or renting.

Inspector Yates stated both. He stated there was no evidence that she rented it.

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 a one-time fine in the amount of \$1,000, payable within 30 days, be imposed, the property is in Compliance as of October 1st, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

CASE # 6 - RTL 10-24-96 - 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 – 10/3/2024.

Respondent was not present.

Inspector 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 this zoning district. He stated he first observed the violation on October 3rd, 2024 and notified them the same day. He stated the advertising stopped on October 18th, 2024. He stated the website shows a daily rate of \$203, 3 reviews, and rules state check in and out at 4 pm and 11 am. He stated this is a repeat violation from RTL-03-24-32 on March 26, 2024; RTL-06-24-60 on June 25, 2024 and RTL-06-24-70 on July 23, 2024. 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 last guest was October 17th with trailers and bikes which are now gone. He stated he had contact with the owner and he argued over the City's ability to Notice and said he was being harassed with Notices.

Mr. Jackson repeated the City's argument as to why the violation should be considered Irreparable and Irreversible in Nature

Mr. Riggio asked the inspector to repeat the nightly rate.

Inspector Yates stated \$203.

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 a repeat violation and is irreparable and irreversible in nature. He ordered that a one-time fine in the amount of \$15,000, payable within 30 days, be imposed and that the property is in Compliance as of October 22nd, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

CONTINUED CASES: IRREPARABLE/IRREVERSIBLE

CASE # 8 - RTL 09-24-86 – A Denise Moore is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **100 Kingbird Cir #1.** 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 – 8/21/2024.

Ms. A Denise Moore came forward and was sworn in.

Mr. Riggio stated the case was continued from last month as the Respondent was having problems taking down the Airbnb.

Inspector Yates stated the advertisement was taken down the same day as the last hearing. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000.

Ms. Moore waived repetition of Mr. Jackson's argument that the violation is irreparable and irreversible in nature.

Mr. Riggio stated he would incorporate Mr. Jackson's argument, made in Case #1, 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 ordered that a one-time fine in the amount of \$1,000, payable within 30 days, be imposed and that the property is in Compliance as of September 24th, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

CASE # 7 - RTL 09-24-84 - Chestnut LFTY0329 DAO LLC is cited for failure to correct violations of LDC Art. 4 Sec. 4.1.A; Art. 5 Sec. 5.2.A.2, at **402 N Wild Olive Ave**. 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 – 8/22/2024.

Mr. Calixte Duffaug, owner, came forward and was sworn in.

Inspector Yates stated the case was field generated and the property is zoned RP. Short-term rentals, known as "Other Accommodations", are not a permitted use in this zoning district. He stated he first observed the violation on August 22nd, 2024 and notified them the same day. He stated the advertisement is still active. He stated the website shows a daily rate of \$174, rules state check in and out at 3 pm and 10 am. He stated the violation is irreparable and irreversible in nature and is asking for a fine in the amount of \$1,000. He stated the Respondent must discontinue advertising and rentals on VRBO and Airbnb.

Mr. Duffaug waived repetition of Mr. Jackson's argument as to why the violation is irreparable and irreversible in nature.

Mr. Riggio stated he would incorporate Mr. Jackson's argument, made in Case #1, into the record.

Mr. Jackson stated the City would normally be asking for a more substantial fine but for the record at the last hearing the Respondent agreed he would maintain the status quo. He stated although he did not receive the documents in full, he has done some research and believes we can proceed as to what violation may have occurred due to the advertising.

Mr. Duffaug stated there are two giant companies who have millions of dollars and they are called Atasso? He stated they own properties all over and they have split it into 8 shares and list them as vacational rental. He stated one share could be \$425,000. He stated they are operating here. He stated they are owners and they pay taxes. He stated he got in touch with Mr. Yates

and forwarded all of the documents and they show that the structure of his organization allows for them to be there because they are owners. He stated he and his family visit the property while it is listed. He stated they are owners and they take care of the property. He stated he forwarded the structure and all of the documents. He stated after Mr. Yates spoke to the attorneys, he didn't hear anything else after that. He stated when he came the last time, he reached out and asked if he could answer some questions and he did make an effort to call the office to speak to the attorney. He stated Pada-split is a similar model. He stated he did comply with the City by changing the structure of the posting that shows that the only people that can stay there are exclusive members. He stated when there is something wrong he goes in and fixes it and that the owners are vested in the property. He stated there is an algorithm that divides the property into 8 owners so that each owner owns 1/8.

Mr. Riggio asked if the property is owned by Picasso?

Mr. Duffaug stated yes but they are doing it on a billion-dollar scale. He stated they subdivide the property in 8.

Mr. Jackson pointed out that the Respondent is referencing a similar model.

Mr. Duffaug used an example of someone who lives in New Jersey who wants to buy a home in Daytona Beach.

There was discussion, and clarification, that a home is subdivided into 8 different owners and Mr. Riggio asked why do they need to advertise on Airbnb and VRBO.

Mr. Duffaug stated that Picasso does not need to use Airbnb and VRBO because they have their own website. He stated he uses it so they can log in and book their vacations and it is free. He stated he has a direct booking for the owners and they can call and say they are coming in. He stated Inspector Yates spoke to the Attorney and he hasn't heard anything back. He stated he changed the structure of the posting with Airbnb. He stated owners stay on a weekly basis whenever they want to stay.

Mr. Jackson stated they posted an advertisement. He stated that the business was not registered to operate in Florida.

Mr. Jackson asked that the current advertisement be put up on the monitor in the Chamber.

Mr. Duffaug stated the advertising is still active.

Mr. Jackson stated that is what you were cited for. He stated Mr. Duffaug is asking what can he do instead of what was he cited for and that is a different section of the Code. He stated the ad is an advertisement for short-term rental.

Mr. Duffaug stated that the business was registered in Wyoming before the violation as an actual business and he has documentation.

Mr. Jackson stated there is no documentation that you can provide that states the entity can operate in the state of Florida.

There was discussion that the property is not registered as a business here and is registered in Wyoming.

Mr. Duffaug stated you can do business as a foreign entity in Florida. He stated a lot of people are doing it.

Mr. Jackson asked if it was registered as a foreign entity.

Mr. Duffaug stated if there is failure to register, he can bring that into Compliance.

Mr. Jackson stated that is a separate issue from what he was cited for.

Mr. Duffaug stated that if he needs to he will register. He stated he just wants to continue to operate his business.

There was further discussion regarding the structure of ownership of his business.

Mr. Riggio asked what the difference is between what Mr. Duffaug is doing and a timeshare.

Mr. Duffaug stated no deed for a timeshare and they give you specific weeks when you can use the property.

Mr. Jackson disagreed.

Mr. Riggio stated if you are renting to numerous people you may have turned a single family home into a multi-family.

Mr. Duffaug stated Airbnb has changed and allows long-term rental.

Mr. Riggio stated he doesn't understand why Airbnb would do this if they don't benefit in some way.

There was further discussion regarding people who use these platforms as a convenience for making arrangements for a house.

Mr. Riggio stated if Picasso was using their own website, they are not advertising on a short-term rental platform and Airbnb doesn't want to be a convenience for the public at large. He stated you probably need your own website so your owners can go online and book. He stated right now, you are attaching your property onto a short-term rental platform.

Mr. Duffaug stated Airbnb knows what he is doing and gives their approval. He stated he wants to be in Compliance with the City. He stated he forwarded the organizational agreement, the operating agreement to Mr. Jackson. He stated he changed the verbiage to say you can't stay at the property unless you are an owner.

Mr. Jackson stated just because they have taken it down doesn't mean they approve. He stated he remembers reading something about temporary ownership.

Mr. Duffaug stated that if you decide you don't want to own it anymore he would have to buy you out.

Mr. Jackson stated that he thought he read that after temporary ownership, you can convert it to permanent.

Mr. Duffaug stated if anyone wanted to buy in at any time, they would go on the block chain. He stated it is a crypto ownership. He stated you go into it and just like if it's Tesla, you can buy it. He said if you want to sell it, you can sell the share as well.

Mr. Riggio stated this is a hearing and I can't advise you what you can and cannot do since that is up to the City. He stated this ~~form~~ ^{forum} is not for deciding if I do this or change that will it no longer be a violation. He stated the Respondent should contact the zoning department. He stated his concern is that being on a short-term rental website has tripped the meter to being a short-term rental.

Mr. Jackson stated that the Respondent has made some changes but our view today is that the violation that occurred and we are not in acceptance of the changes that have been made.

Mr. Duffaug stated that the violation is like a broken door and now he has fixed the door and is in Compliance. He stated he changed the verbiage to be in Compliance.

Mr. Riggio stated Mr. Duffaug needs to sit down with the planners and find out what is acceptable to them.

Mr. Duffaug stated he corrected the problem that the City objected to and would like to continue to operate his business.

Mr. Jackson stated we will deal with the violation before us and as far as business models are concerned, they go to Planning.

Mr. Duffaug stated he would like to sit down with Mr. Jackson.

Mr. Jackson stated his advice is advice to the City. He suggested Mr. Duffaug may want to hire and consult his own counsel.

Mr. Riggio stated he is going to issue an order and if the Respondent gets with City Staff and they agree to allow it, he can come back as a lien review and he will reconsider his ruling.

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 \$1,000, payable within 30 days, be imposed and that the property is in Compliance as of September 17th, 2024, and that any future repeat violations may be returned to the Magistrate for consideration of a fine up to \$15,000 per occurrence.

Mr. Jackson asked the inspector for the change date on the advertising for Compliance.

Inspector Yates stated September 17th, 2024.

Mr. Riggio stated this matter was continued based on getting with the City and the fine reflects issues that need to be looked into further. He stated when someone is trying to start a business,

and there are questionable areas within the law, they find counsel that will advise you how to do that and then you meet with the City planners and discuss what your model is and come up with a way.

Mr. Riggio asked for any Miscellaneous Business and there was none.

The meeting was adjourned at 3:34 pm.