

CITY OF DAYTONA BEACH

MINUTES

**SPECIAL
MAGISTRATE
HEARING**

November 10, 2009 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

ATTENDEES:

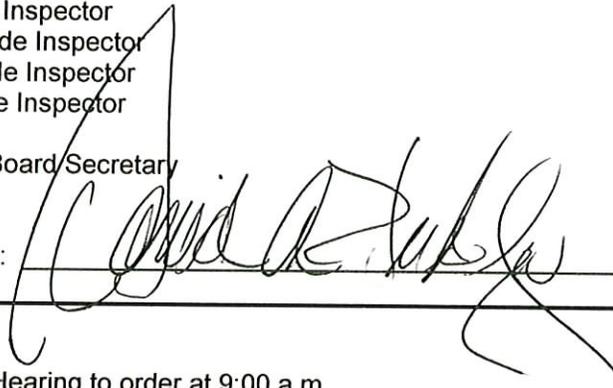
Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Sgt. William Bailey
Ofc. Steven Jessmer
Mr. Steve Alderman, Code Inspector
Mr. Tom Clig, Code Inspector
Mr. Mark Ellison, Code Inspector
Mr. Robert Kish, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. John Stenson, Code Inspector
Mr. Denzil Sykes, Code Inspector

Ms. Aimee Hampton, Board Secretary

Approval of Minutes by:



Special Magistrate

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

Staff members who would be testifying during the Hearing were sworn by Ms. Hampton

Mr. Vukelja approved the Minutes for the October 13, 2009 Meeting Minutes.

Lien Review 1

SMG 05-08-72 – 747 Vernon Street – Delia Mae Quarterman Estate (New Owner – Bright Vision Investment, LLC – David Beddard): Order Imposing Fine/Lien of \$50.00 per day effective July 3, 2008; Compliance 10/19/09 = 473 days @ \$50.00 per day = **\$23,650.00**.

David Beddard, New Owner came forward and was sworn. Mr. Beddard provided a timeline of actions taken since the date of purchasing the property and stated the house was demolished and therefore the property is now a vacant lot. Mr. Beddard further advised he made the property available to the City of Daytona Beach Police Department SWAT Team for a training exercise. Mr. Beddard requested elimination of the lien.

Mr. Vukelja reviewed the case file and inquired of the Respondent the amount of reduction he would propose.

Mr. Kish testified on behalf of the City and stated the building was derelict and an eyesore prior to Mr. Beddard purchasing the property. Mr. Beddard stated as soon as Mr. Beddard became involved the violations were corrected. Mr. Kish recommended a reduction to 10% of the amount of the lien based upon the property was vacant with numerous transients coming in and out of missing windows and three different Inspectors worked on the job.

Ruling

Mr. Vukelja reduced the amount of the lien to \$236.50 payable within thirty days or the lien reverts back to the original amount and interest will continue to accrue.

Lien Review 2

SMG 04-08-65 – 419 Temko Terrace – Ty Bowie: Order Imposing Fine/Lien of \$150.00 per day effective June 4, 2008; Compliance 10/28/09 = 511 days @ \$150.00 per day = **\$76,650.00.**

Respondent Ty Bowie came forward and was sworn. Mr. Bowie stated he removed the deck once he was made aware of the violation during Memorial Day Weekend 2008. Mr. Bowie further stated he had sworn affidavits stating they removed the deck during that weekend. Mr. Bowie further stated he was selling a separate property however since this lien attaches to that property and he was requesting a full release because he believes he was in compliance prior to the lien being imposed.

Mr. Vukelja reviewed the case file and case history.

Mr. Clig testified on behalf of the City and stated he has several cases in which Mr. Bowie has failed to return his phone calls and ignores requests for compliance. Mr. Clig recommended reduction to 10% percent of the amount of the lien. Mr. Clig contested Mr. Bowie's suggestion that the deck was removed in 2008 because he has had several other cases in the surrounding area of the property and did not see the deck removed until October 2009.

Ruling

Mr. Vukelja reduced the amount of the lien to the amount of \$3,000.00 payable within thirty days or the lien shall revert back to the original amount and will continue to accrue interest.

HEARING OF CASES

CASE NO 1 SMG 01-09-02 – Joseph Burton Hardy III, Joyce L. Wright and Juliette Massey has been cited for failure to correct violations of the Land Development Code, See attached housing inspection report, at **550 Tomoka Road** - Violation(s) – Maintenance Code (reference sections of the attached Housing Inspection Report) - First Notified – 9/19/2008.

Mr. Hardy came forward and was sworn. Mr. Hardy stated the primary reason for no contact was due to his perceived negative contact with Mr. Stenson. Mr. Hardy stated he would like a City engineer look at the floor prior to imposing a fine. Mr. Hardy stated he did not understand what was wrong with the Interior.

Mr. Vukelja reviewed the case file and case history. Mr. Vukelja inquired of Mr. Stenson and Mr. Hardy if they were willing to work amicably with each other.

Mr. Stenson testified on behalf of the City and stated since the last hearing he has not received any contact from Mr. Hardy and other than the grass being maintained there has been no progress on the

property. Mr. Stenson stated he would be willing to contact a Building Official to come to the property to inspect the floor to determine if it is structurally sound.

Mr. Jackson stated he believe the Inspector was trying to relay that any lay person could walk across the floor and know that it is structurally unsatisfactorily, however a certified building inspector or engineer may be able to state the floor is sound.

Ruling

Mr. Vukelja ruled to continue the imposition of a fine determination to the December 8, 2009 Special Magistrate Meeting.

CASE NO 2 SMG 03-09-14 – Harman Investments, L.L.C. has been cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1 (ref. 105.1 FBC), at **919 N. Atlantic Avenue** - Violation(s) – No permit for water drainage plan before clearing and improving vacant lot - First Notified – 5/12/2008.

Zachary L. Harman came forward and was sworn. Mr. Harman stated he was the son of Richard Harman who has appeared previously at the meetings. Mr. Harman stated the grass was cleared from the lot because of vagrants living there and when the grass was removed, gravel layer was placed on the property to prevent the grass from growing back. Mr. Harman stated there were no trees or dirt removed from the property. Mr. Harman stated Lawrence Bennett is handling the permitted with the City and the property has now been returned to the old owners.

Mr. Vukelja reviewed the case history. Mr. Vukelja inquired of the Inspector of the TRT permit process.

Mr. Alderman testified on behalf of the City and reviewed the case history and stated the property was in non-compliance and further the application to obtain the permit was in the TRT (Technical Review) with zoning and further stated zoning was waiting on resubmission of the additional information needed. Mr. Alderman stated the issue was not the improving of the property and believed Mr. Harman's intentions are good, however the work required a permit.

Ruling

Mr. Vukelja continued the matter until the January 12, 2009 Special Magistrate Meeting.

CASE NO 3 SMG 08-09-59 – Deborah Taft has been cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7 and Art. 19 Sec. 1 (ref. 302.8 IPMC), at **703 Madison Avenue** - Violation(s) – Outside storage; junk vehicles - First Notified – 4/28/2009.

Respondent was in Compliance October 25, 2009.

CASE NO 4 SMG 08-09-63 – Paolo & Clara Sorrentino has been cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 2 (ref. 105.1 FBC), at **922 W. Millard Court** - Violation(s) – Built shed without permits - First Notified – 5/5/2009.

Respondent was in compliance September 30, 2009.

CASE NO 5 SMG 09-09-79 – Louise M. Malusis has been cited for failure to correct violations of the Land Development Code, Art. 8 Sec. 3, at **500 S. Seneca Blvd.** - Violation(s) – Erecting fence without permits - First Notified – 6/23/2009.

Respondent was in compliance October 29, 2009.

New Cases:

CASE NO 6 SMG 11-09-80 – Robert J. Matuszczak has been cited for failure to correct violations of the Land Development Code, Art. 8 Sec. 2.7, at **262 Lexington Drive** - Violation(s) – Parking in the yard, unimproved surface - First Notified – 9/23/2009.

Respondent was not present.

Mr. Ellison testified on behalf of the City and stated the violations consisted of parking in the yard and on an unimproved surface. Mr. Ellison stated there is some construction going on and the excessive vehicles could be because of that. Mr. Ellison stated he advised Mr. Matuszczak he would be found in non-compliance and given until the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 2, 2009 or be returned to a subsequent meeting for consideration of a fine up to \$1,000.00 per day until compliance is achieved.

CASE NO 7 SMG 11-09-81 – Peter Lee has been cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IMPC Sections as referenced on the attached Housing Inspection Report), at **519 N. Ridgewood Avenue** - Violation(s) – Sections of the IPMC as referenced on the attached Housing Inspection Report - First Notified – 8/12/2009.

Respondent Peter Lee came forward and was sworn. Mr. Lee stipulated to non-compliance and requested seven months to come into compliance as he wanted to improve the building substantially and financially it would him that long to be able to repair everything. Mr. Lee stated he pulled the permits for the windows and roof himself. Mr. Lee stated the windows were completed.

Mr. Stenson testified on behalf of the City and stated a minimum of 60 days should be enough time to come into compliance. Mr. Stenson stated since the property was a commercial structure he needed a contractor for the work on the repairs.

Mr. Jackson stated if Mr. Lee stated on the permit it was a residential property then Permits and Licensing probably issued the permit to him based upon the information provided, even though it is a commercial property.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent appear at the December 8, 2009 Special Magistrate Meeting for a Progress Report and determination of a compliance date.

CASE NO 8 SMG 11-09-82 – Leah D. Lowe has been cited for failure to correct violations of the City Ordinance 90-297, at **1014 Thunderbird Drive** - Violation(s) – No occupational license - First Notified – 8/5/2009.

Respondent was not present.

Ms. Lankford testified on behalf of the City and stated the property was in non-compliance and recommended the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 2, 2009 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

CASE NO 9 SMG 11-09-83 – Samuel L. Merrill, Jr. & Linda S. Merrill has been cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IMPC 304.13), at **149 Oakwood Drive** - Violation(s) – Damaged window - First Notified – 8/18/2009.

Respondent was not present.

Ms. Lankford testified on behalf of the City who stated the property was in non-compliance with a broken window and recommended the next cut-off date for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 2, 2009 or be returned to a subsequent meeting for consideration of a fine up to \$1,000.00 per day until compliance is achieved.

CASE NO 10 SMG 11-09-84 – Five Star of Central Fla, Inc. has been cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC 105.1), at **214 N Keech Street - Main Number** - Violation(s) – Failure to obtain permit(s) for work being done on property - First Notified – 7/10/2009.

Surujnauth Bharrat came forward and was sworn and stipulated to non-compliance. Mr. Bharrat stated the contractor did not know he had to pull permits for each building but was working with the City to pull all the permits. Mr. Bharrat stated he has requested the removal of the Section 8 status with HUD because of all the damages the tenants were causing and they were refusing to pay for said damages.

Mr. Sykes testified before the City and stated as of November 4, 2009 Mr. Bharrat's contractor pulled permits for only two out of the 13 buildings on the property and the City wanted to make sure the contractor was aware of he needed to pull separate permits per each building. Mr. Sykes stated he would provide an itemized list of what all the violations for the entire complex were.

Mr. Jackson stated the property is Daytona Village which is low income housing with Section 8 status however the Section 8 Status revoked and the residents were provided vouchers to move because there were multiple damages and deplorable living conditions. Mr. Jackson stated the notice of violation lists the main office and perhaps the notice needs to be amended that the notice was for all the addresses encompassed on the property.

Mr. Jackson suggested a Progress Report to allow the Inspector to go and inspect the property to determine what violations are for each building and then provide that information to the Respondent in order to determine what specifically needs to be corrected at each building.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent appear at the December 2, 2009 Meeting for a Progress Report and determination of a compliance date. Mr. Vukelja stated just to clarify it was his understanding that the notice of violation covers all properties that are headquartered at 212 and 214 N. Keech Street.

CASE NO 11 SMG 11-09-85 – Herbert Aguiar has been cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IMPC Sections as referenced on the attached Housing Inspection Report), at **517 Madison Avenue** - Violation(s) – Sections of the IPMC as referenced on the attached Housing Inspection Report - First Notified – 12/20/2008.

Respondent, Herbert Aguiar came forward and was sworn and stipulated to non-compliance. Mr. Aguiar stated the property was being foreclosed because he cannot sell the property and he cannot keep a

tenant who pays rent. Mr. Aguiar stated he painted and did some fascia work to try to make the property look better. Mr. Aguiar stated there are only two people living there but the tenants allow others on the property to stay there. Mr. Aguiar stated he wants the property for the commercial value and not as a residence and he would prefer to use the property as an office but zoning would not permit it.

Mr. Stenson testified on behalf of the City stated the property was in non-compliance and recommended the next cut-off date for compliance. Mr. Stenson stated the property has been a huge police issue and is a constant problem. Mr. Stenson stated the property is illegally divided in half as it is a single family residence.

Officer Jessmer stated the police issues consisted of transients and an individual was set on fire there as well.

Sgt. Bailey stated if Mr. Aguiar could evict the tenants, board up the property and list the property as a trespass arrest site and he could be put in compliance.

Mr. Vukelja advised the Respondent that as long as it is a rental property it is his obligation to maintain the property unless it is no longer a rental property, therefore if he evicted the tenants and secured the property to city standards the property could be placed into compliance.

Mr. Jackson stated securing the building and removing the tenants or demolishing the property would be possible by the next cut-off date.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent return to the December 8, 2009 for the determination of a compliance date.

Miscellaneous Business

There was no miscellaneous business.

The hearing was adjourned at 10:45 a.m.