

CITY OF DAYTONA BEACH

MINUTES

**SPECIAL
MAGISTRATE
HEARING**

**August 17, 2010 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
Officer Sherri Siracusa
Ms. Colleen Miles, Zoning Officer
Mr. Steve Alderman, Code Inspector
Mr. Robert Kish, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. John Stenson, Code Inspector

Ms. Aimee Hampton, Board Secretary

Approval of Minutes by: _____

Special Magistrate

Mr. Vukelja called the Hearing to order at 9:17 a.m.

Mr. Vukelja approved the minutes of the June 8, 2010 Regular Meeting.

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

BIKETOBERFEST MASTER PLAN APPEALS

CASE 1: FRESH AT MAIN – 116 Main Street - Requested by John Younkie - Appeal of denial of Biketoberfest Executive Committee for participation in Master Plan outside activities for Biketoberfest 2010 due to 60 ft – contiguous property definition.

Mr. Robert Lowery came forward and was sworn. Mr. Lowery stated the denial was based upon the same denial as in years past and advised all the arrangements made with the City are the same.

Ms. Colleen Miles stated the City had no objection to granting the appeal.

Ofc. Siracusa advised the only difference is the business would be hiring outside detail officers to handle the crosswalk instead of crossing guards.

Ruling

Mr. Vukelja granted the appeal of Fresh at Main to allow participation in the Master Plan outside activities for Biketoberfest 2010.

Mr. Vukelja then proceeded with the Regular Meeting Agenda.

CASE NO 1 SMG 01-10-12; 01-10-13; 01-10-14; 01-10-17 – Halifax Wrecking Company, Inc. & Robert Klenk is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (ref. FBC Supp IPMC 302.7 & 302.8) - Accessory Structures (fence) & Junk Vehicle; Art. 1 Sec. 5.3(b) - Nonconforming use of vacant lot; Art. 13 Sec. 3.6(a) - Salvage/recycling facility conditional use in M-1 district; City Ordinance 90.297 - Occupational license required; City Ordinance 78-111 - Overgrown conditions and/or accumulation of debris; LDC Art. 19 Sec. 1.1 (ref. FBC 105.1) - Permits required for excavation work, at **Parcel # 39-15-33-32-05-0060 (Wallace Street) & Parcel # 39-15-33-42-00-0040 (Marion Street); Parcel # 39-15-33-42-00-0020 (Marion Street) & Parcel # 39-15-33-42-00-0030 (419 Marion Street); Parcel # 39-15-33-01-26-0074 (Loomis Avenue) & Parcel # 39-15-33-01-26-0075 (Loomis Avenue); Parcel # 39-15-33-32-05-0070 (Wallace Street)** - Violation(s) – Failure to maintain fence; Failure to remove vehicles that are inoperable without a tag; Failure to maintain vacant lot as vacant; Operating a salvage/recycling facility without meeting the conditions of conditional use: without building, without pavement, with outside storage; Failure to obtain occupational license for salvage/recycling facility; Failure to cut tall grass/weeds and remove debris; Failure to obtain permit for grade change including creation of soil mounds - First Notified – 12/4/2009.

Attorney Barry Hughes appeared on behalf of Halifax Wrecking, Inc./Robert Klenk and stated there has been substantial progress by clearing out the properties. Mr. Hughes provided a description of the items that have been removed.

Mr. Vukelja requested an overview of the cases.

Mr. Hughes stated all six cases were divided and consolidated by northern properties and southern properties.

Andrew Hoener, employee of Robert Klenk was present but did not provide testimony.

Mr. Kish testified on behalf of the City and concurred with Mr. Hughes regarding substantial progress being made.

Mr. Jackson stated there are several parcels that make up the entire property.

CASE NO 2 SMG 02-10-22 – Carry Bernadette Smith-Ramsey is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3; Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 304.10, 304.13, 304.2, 304.6, 604.3, 504.3 and 304.4); Chapter 90 Sec. 90-297 Code of Ordinances, at **210-214 College Park Drive** - Violation(s) – Outside storage, exterior stairs, windows, exterior paint, exterior surfaces, inadequate power services, inadequate water services, structural members, no rental license - First Notified – 11/25/2009.

Respondent was not present.

Mr. Stenson testified on behalf of the City and stated he received a phone call from the Respondent who advised her brother is going to hire a lawyer to help clear up the title issues with the property. Mr. Stenson advised the property was being maintained. Mr. Stenson recommended sixty (60) days to come into compliance.

Mr. Vukelja reviewed the case history and indicated the title issues were substantial.

Mr. Jackson stated perhaps the new resolution that was imposed that maximized the fine would help as far as the title issues were concerned.

Mr. Vukelja and Mr. Jackson discussed the new maximum fine amounts imposed on properties.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondents until October 6, 2010 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 3 SMG 04-10-54 – James Cotton, Jr. & Rebecca Cotton is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7, at **1050 Imperial Drive** - Violation(s) – Peeling paint - First Notified – 12/28/2009.

Respondent Rebecca Cotton came forward and was sworn. Ms. Cotton stated good progress was being made.

Ms. Lankford testified on behalf of the City and stated there was good progress being made through community development. The job is being awarded to a contractor and further advised there should be a new house by January 5, 2011.

Ruling

Mr. Vukelja amended the order of non-compliance to require the Respondents come into compliance by January 5, 2011 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 4 SMG 04-10-63 – Norman H. Riley is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC 105.1); Ch. 90-297 Code Ordinances, at **340 Taylor Avenue** - Violation(s) – No permit for fencing; no occupational license for rental - First Notified – 2/5/2010.

Respondent was not present.

Mr. Stenson testified on behalf of the City the Respondent was present but he excused Mr. Riley from the meeting. Mr. Stenson advised Mr. Riley was working with zoning staff and he believed the issue will be resolved by the September cut-off date.

Ruling

Mr. Vukelja amended the previous order of non-compliance to require the Respondent come into compliance by September 8, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 5 SMG 06-10-82 – Arline Warwick is cited for failure to correct violations of the Land Development Code, Art. 1 Sec. 5.3, 5.3a1, 5.3a2, 5.3a3; City Ordinance 90-297, at **1317 N. Halifax Avenue** - Violation(s) – Illegal dock construction and extension, illegal conversion of single family residence to a tri-plex, no rental occupational license - First Notified – 3/5/2010.

Mike Clower, Esquire appeared for Ms. Warwick and stated the building is in foreclosure which was being handled by one of Mr. Vukelja's partners, and it is currently unoccupied and not being rented. Mr. Clower further advised the Respondent did not have the funds to restore the property to a single family residence.

Mr. Vukejka disclosed the nature of his relationship with Mr. Corey and inquired if either party had an objection to him hearing the matter.

Mr. Clower stated he did not have an objection and Mr. Jackson from the City stated he had no objection either.

Respondent, Arline Warwick came forward and was sworn. Ms. Warwick stated the property was in foreclosure but also is listed for sale.

Mr. Alderman testified on behalf of the City and stated the dock extension has been corrected by the neighbor. Mr. Alderman stated the outstanding violations consisted of the illegal conversion into a tri-plex and further advised there was a dirty pool unsecured pool which he issued a separate notice of violation to the Respondent's for. Mr. Alderman stated the work was extensive to bring the illegal conversion into compliance and would take approximately two months.

Mr. Jackson asked Ms. Warwick if she planned on maintaining the property despite being in foreclosure.

Mr. Warwick stated she did not have the funds to continue to maintain the property.

Mr. Jackson further advised the City recently entered into a contract with a company to handle the City's vacant property registration.

Ruling

Mr. Vukelja amended the previous order of non-compliance to require the Respondent come into compliance by November 3, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day. It was further ordered the property not be occupied, rented or utilized until compliance is achieved. Mr. Vukelja then found the pool was in an unsafe condition and required immediate action in order to eliminate the potential hazard to the Respondent and public and therefore ordered the Respondent come into compliance with the pool by August 24, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved. Mr. Vukelja further ordered the property be secured and maintained to City standards by August 24, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 6 SMG 06-10-85 – Shirley Oldenburgh is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 504.3, 604.3, and 304.6), at **153 Taylor Avenue** - Violation(s) – Plumbing system hazard; electrical system hazard and exterior surfaces - First Notified – 3/30/2010.

Respondent was in compliance August 9, 2010.

CASE NO 7 SMG 07-10-97 – Fran J. Lasseter is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 302.5, 304.13, 304.7); Ch. 90-297 Code of Ordinances), at **314 Cottrill Avenue** - Violation(s) – Rodent harborage; windows and doors; roof and drainage; no rental license - First Notified – 2/4/2010.

Tim Hassler appeared on behalf of the Respondent and came forward and was sworn. Mr. Hassler stated there were two structures on the property and the front and rear were both occupied. Mr. Hassler advised the front property passed all inspections but they could not obtain the rental license because more repairs need to be done for the rear structure.

Mr. Stenson testified on behalf of the City and stated all been corrections made to the front building which has passed the inspection for the license however the license cannot be issued until the rear building can be upgraded.

Mr. Vukelja stated he wished the minutes to reflect that there is a separate rear structure on the 314 Cottrill Avenue which is impacting the Respondents ability to obtain a rental license as there is additional work required on the rear structure and that he is allowing additional time to the Respondent in order to make those repairs.

Ruling

Mr. Vukelja amended the previous order of non-compliance to require the Respondent come into compliance by November 3, 2010 or be returned a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 8 SMG 07-10-98 – Walter Washington, Jr. & Clara Washington is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 304.1, 304.4, 304.7, 304.13, 305.1, 305.3, 305.6, 504.3 and 604.3), at **505 N. Lincoln Street** - Violation(s) – Exterior structure; structural members; roof and drainage; windows/doors; interior structure; interior surfaces; interior doors; plumbing system hazards; electrical system hazards - First Notified – 4/21/2010.

Respondent was not present.

Mr. Stenson testified on behalf of the City and stated the property was in non-compliance and he has had no contact from the owner. Mr. Stenson recommended imposing a fine in the amount of \$50.00 per day with a maximum amount of \$10,000.00.

Ruling

Mr. Vukelja ordered a fine in the amount of \$50.00 per day be imposed against the Respondent on August 4, 2010 to continue until compliance is achieved not to exceed the maximum amount of \$10,000.00.

CASE NO 9 SMG 07-10-101 – Jacquelyn Cord-Phinisee is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 302.8, 302.7, 304.2 and 304.13), at **642 Shady Place** - Violation(s) – Junk vehicle; accessory structure (fencing); peeling paint; windows First Notified – 5/15/2010.

Respondent was in compliance July 26, 2010.

CASE NO 10 SMG 08-10-102 – Conch House Ocean Waters, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 304.3, 304.2, 304.15, 304.13, 704, 605, and 304.6), at **700 N. Atlantic Avenue** - Violation(s) – Exterior structure maintenance; exterior wiring; fire extinguishers out dated; broken windows; damaged room doors; building address - First Notified – 3/24/2010.

Respondent was not present.

Mr. Alderman testified on behalf of the City and stated he has been in constant contact with the owners of the property and they are approximately 80 percent in compliance but at this time the property was in non-compliance and recommended the next cut-off date initially but then recommended the October cut-off date.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 6, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 11 SMG 08-10-103 – Felix Matta is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 5.13(a), at **124 Azalea Drive** - Violation(s) – Dead trees - First Notified – 6/17/2010.

Respondent was not present.

Mr. Stenson testified on behalf of the City and stated the property was in non-compliance and further advised there is another fine imposed against the property for outside storage. Mr. Stenson 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 September 8, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 12 SMG 08-10-104 – Carl Woods is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3, at **535 Brentwood Drive** – Violation(s) – Outside storage - First Notified – 5/7/2010.

Respondent was in compliance August 9, 2010.

CASE NO 13 SMG 08-10-105 – Jo Ann Hough is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3, at **240 Center Street** - Violation(s) – Outside storage - First Notified – 6/16/2010.

Respondent was in compliance July 19, 2010.

CASE NO 14 SMG 08-10-106 – Joseph Enterprises USA, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC 105.1), at **600 W. International Speedway Blvd.** Violation(s) – Working without permits – First Notified – 6/7/2010.

Respondent was not present.

Mr. Stenson testified on behalf of the City and stated the Respondent did appear but he excused the Respondent. Mr. Stenson further stated the Respondent has applied for permits but they have not been issued yet.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by September 8, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 15 SMG 08-10-107 – BH Properties, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 304.10 and 304.6), at **212 Madison Avenue # 1** - Violation(s) – Stairs, decks, porches and balconies; exterior walls - First Notified – 6/4/2010; 5/28/2010; 6/9/2010

Respondent was in compliance July 7, 2010.

CASE NO 16 SMG 08-10-108 – AR & JB Plaza, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC 105.1 Supp IPMC 304.6), at **1276 8th Street** - Violation(s) – All electrical work requires a permit (defective/illegal wiring throughout); all exterior walls shall be maintained weather proof and free of defects - First Notified – 5/6/2010.

Respondent was not present.

Ms. Lankford testified on behalf of the City and stated the property was in non-compliance and recommended the October cut-off date for compliance. Ms. Lankford further stated the property was a shopping center that is in foreclosure and she has been in contact with the receiver.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 6, 2010 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 17 SMG 08-10-109 – James Cortazar is cited for failure to correct violations of City Ordinance 90-297, at **1041 Berkshire Road** - Violation(s) – No occupational license - First Notified – 4/29/2010.

Respondent was not present.

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

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 6, 2010 or be returned to a subsequent meeting for consideration of the one-time administrative fine of Two Hundred Fifty Dollars (\$250.00).

CASE NO 18 SMG 08-10-110 – Diana M. Benezette is cited for failure to correct violations of City Ordinance 90-297, at **829 Lewis Drive** - Violation(s) – No occupational license for rental property - First Notified – 5/6/2010.

Respondent was not present.

Ms. Lankford testified on behalf of the City and stated the property was in non-compliance and recommended the October cut-off date for compliance. Ms. Lankford further advised they have applied for the license but have failed the inspection twice.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by October 6, 2010 or be returned to a subsequent meeting for consideration of the one-time administrative fine of Two Hundred Fifty Dollars (\$250.00).

MISCELLANEOUS BUSINESS

1. **CASE NO SMG 03-10-44 – Jay J. Curtiss** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 302.8), at **326 Hobart Avenue** – Violation(s) – **Junk vehicle storage** - First Notified – 12/17/2009.

Officer Siracusa recommended the fine be removed due to an administrative error.

Ruling

Mr. Vukelja vacated the Order Imposing Fine/Lien entered May 11, 2010.

2. **CASE NO SMG 06-10-84 – Harold W. Hunter, Sr. & Lisa Hunter Davis** is cited for failure to correct violations of City Code 90-297, at **620 Pine Street** - Violation(s) – **No rental license** – First Notified – 4/7/2010.

Ms. Hampton advised that this case had due process problems as the property address entered was incorrect. Ms. Hampton further advised an Order Imposing Fine was entered but not recorded.

Ruling

Mr. Vukelja vacated the Order Imposing Fine/Lien that was entered on July 13, 2010.

3. **CASE NO SMG 06-10-94 – Suzanne Galasso, Kathleen J. & Leon A. Linet** is cited for failure to correct violations of City Code 90-297, at **844 Pinewood Street** – Violation(s) – **No rental license** First Notified – 3/15/2010.

Ms. Lankford stated the Respondents acquired the occupational license prior to the fine date however that information was not available in the system at the time the Inspector checked the system.

Ruling

Mr. Vukelja vacated the Order Imposing Fine/Lien that was entered on July 13, 2010.

4. Mr. Vukelja reviewed with Mr. Jackson and Ms. Hampton the Special Meeting minutes for May 4, 2010. Mr. Vukelja approved the Minutes of the May 4, 2010.
5. Mr. Vukelja reviewed a past case ruling with Mr. Jackson regarding awarding administrative costs to the City.
6. Mr. Vukelja reviewed the Adopted Resolution regarding Amnesty and Maximum Fines amounts and asked Mr. Jackson about the section regarding the Special Magistrate hearing property owner's hardship requests per Section 6 of the Resolution.

Adjournment: The meeting was adjourned at 10:50 a.m.