

# CITY OF DAYTONA BEACH MINUTES

## SPECIAL MAGISTRATE HEARING

October 11, 2011 at 9:00 AM  
City Commission Chambers  
301 South Ridgewood Avenue,  
Daytona Beach, Florida

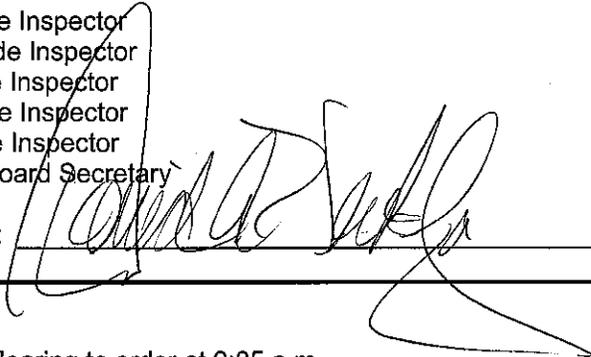
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ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney  
Mr. Hector Garcia, Code Compliance Manager  
Sgt. Tracy Miller  
Ofc. Sherri Siracusa  
Mr. Daniel Garcia, Code Inspector  
Ms. Vicki Lankford, Code Inspector  
Mr. Edwin Lopez, Code Inspector  
Mr. John Stenson, Code Inspector  
Mr. Denzil Sykes, Code Inspector  
Ms. Aimee Hampton, Board Secretary

Approval of Minutes by:  \_\_\_\_\_ Special Magistrate

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Mr. Vukelja called the Hearing to order at 9:05 a.m.

Mr. Vukelja approved the August 23, 2011 Special Meeting Minutes and the September 13, 2011 Regular Meeting Minutes.

Ms. Hampton swore in members of staff.

**CASE NO 1 SMG 08-11-82 – Vandall of Daytona, Inc.** is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 5.13 & 5.13(b); Art. 18 Sec. 5.4 & 5.4(a)(b)(d); Art. 18 Sec. 5.5 & 5.5(a); Art. 18 Sec. 5.6 & 5.6(b), at **614 E. International Speedway Blvd.** - Violation(s) – Peeling paint; mold and mildew on exterior of building; damaged/deteriorated exterior walls; damaged, broken paving in parking area; overgrowth weeds; trash and debris on site; deteriorated fencing; damaged window; rust on exterior of building - First Notified – 5/26/2011.

Respondent was not present.

Ms. Lankford testified on behalf of the City and stated the property was still in non-compliance but they were making good progress. Mr. Lankford recommended amending the compliance date until the next cut-off.

### Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance by November 2, 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 2 SMG 08-11-90 – Melissa Beth Turkish** is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 4; Art. 19 Sec.1.1 (ref. FBC Supp IPMC 302.7 and 304.10), at **410 5th Avenue** - Violation(s) – Appearance standards (landscaping); fencing; porch - First Notified – 6/1/2011.

Respondent was in compliance September 29, 2011.

**CASE NO 3 SMG 09-11-91 – Hollywood Heights, LLC** is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.4.4, at **27 S. Hollywood Avenue** - Violation(s) – Exterior surfaces have deteriorated, decayed, disintegrated, been weathered with dirt and grime, or impaired through peeling or flaking of the paint or other protective coating - First Notified – 5/31/2011.

Respondent was in compliance September 13, 2011.

**CASE NO 4 SMG 09-11-93 – Terry & Russell W. Claunch** is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 4.4(j); Art. 18 Sec. 7.3.3; Art. 19 Sec. 1.1. (Ref. FBC Supp IPMC 304.2), at **202 Harvey Avenue** - Violation(s) – Discolored/faded paint; rotted wood and poor landscaping - First Notified – 5/18/2011.

Respondent was not present.

Mr. Garcia testified on behalf of the City and stated the Respondents were making good progress and recommended amending the compliance date to the next cut-off date.

#### **Ruling**

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance by November 2, 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 5 SMG 09-11-94 – Flippo Properties, LLC** is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 4.4 (c),(h),(i),(j); Art. 18 Sec. 5.13(a) & (b); Art. 18 Sec. 5.4(b); Art. 18 Sec. 5.5(a) & (b), at **715 E. International Speedway Blvd.** - Violation(s) – Peeling/faded paint; damaged concrete soffit, holes, rust, poor landscaping, overgrown weeds, exposed wires - First Notified – 4/14/2011.

Attorney Kim Heller appeared on behalf of the Respondent. Mr. Heller stated there was a contract for sale of the business. Mr. Heller stated the contract for sale is pending but it will take time for the property to sell but the plan was compliance either by painting or demolition or selling.

Mr. Jackson stated that the property was the old B & B Fisheries and was vacant and there was a contract for sale. Mr. Jackson recommended 60 days for compliance and a progress report for the November 8, 2011 meeting.

Mr. Garcia testified on behalf of the City and stated the property was secured and will be demolishing unless the property is sold.

#### **Ruling**

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until January 4, 2012 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day and further ordered a progress report for the November 8, 2011 Meeting and that the property be maintained and remain secured to City standards.

**CASE NO 6 SMG 09-11-95 – OPC Investments, LLC** is cited for failure to correct violations of Ch. 90-297(a) Code of Ordinances, at **834 School Street** – Violation(s) – No occupational license – First Notified – 3/3/2011.

Respondent was not present.

Mr. Garcia testified on behalf of the City and stated there has been some progress and recommended amending the compliance date to the next cut-off date.

**Board Action**

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent until November 2, 2011 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

**CASE NO 7 SMG 09-11-96 – Frederick & Sabrina L. Metivier** is cited for failure to correct violations of Ch. 90-297(a) Code of Ordinances, at **617 Willie Drive** - Violation(s) – No occupational license - First Notified – 5/25/2011.

Respondent was not present.

Mr. Lopez testified on behalf of the City and stated the property was in non-compliance as there is no rental occupational license on file and recommended imposing a fine.

**Ruling**

Mr. Vukelja imposed a one-time administrative fine of \$250.00 effective October 5, 2011 against the Respondent.

**CASE NO 8 SMG 09-11-97 – Frederick & Sabrina L. Metivier** is cited for failure to correct violations of the Land Development Code, Art. 18 Sec. 7.3.1; Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 307.1), at **617 Willie Drive** - Violation(s) – Debris from torn down brick fence - First Notified – 6/22/2011.

Respondent was in compliance October 7, 2011.

**CASE NO 9 SMG 09-11-99 – Merrell Lloyd** is cited for failure to correct violations of Ch. 90-297(a) Code of Ordinances, at **455 N. Lincoln Street** - Violation(s) – No occupational license for rental - First Notified – 6/22/2011.

Respondent was not present.

Mr. Stenson testified on behalf of the City and stated the property was in non-compliance for failing to obtain a rental occupational license.

**Board Action**

Mr. Vukelja imposed a one-time administrative fine of \$250.00 against the Respondents effective October 11, 2011.

**CASE NO 10 SMG 10-11-102 – Loggerhead Daytona Marina, LLC** is cited for failure to correct violations of the Land Development Code, 42.214(a)(2) Code of Ordinances, at **721 Ballough Road - Violation(s) – Noise Violation/ Meter readings of 69-72 decibels and 68-74 decibels (both readings over the allowed limit per City Ordinance Chapter 42 - First Notified – Will Fine Order entered 4/13/2010**

Robin Reynolds, Manager Caribbean Jacks, came forward and was sworn.

Officer Sherri Siracusa testified on behalf of the City. Officer Siracusa provided the case history based on the Will Fine Order. Officer Siracusa stated patrol responded to several complaints but that they only found violations of the noise ordinance three out of twelve times. Officer Siracusa advised she did not personally take the readings on the sound meter, that patrol officers did and they were unable to attend the hearing this morning. Officer Siracusa stated the three violations that are documented in the Notice are July 1, July 2, and July 15, 2011. Officer Siracusa stated July 2<sup>nd</sup> the reading on the sound meter was 69-72 and the limit is 60 decibels.

Mr. Vukelja asked specifically about the readings and how they were determined the noise ordinance was violated.

Attorney Tyson Waters appeared on behalf of the Respondents and stated the events on July 1<sup>st</sup> and July 15<sup>th</sup> were results of readings done by the neighbor and not the police department. Mr. Waters further stated the CAD reports from July 1<sup>st</sup> that stated at 10:47 p.m. that Caribbean Jacks was still within ordinance. Mr. Waters stated there were 17 complaints and responses by the police department with most times between 10 and 11 p.m. Where there were no violations found. Mr. Waters stated there was an email from Sgt. Blanchette to Lt. Hoffman that stated that all readings took were slightly louder than the ordinance limit however the ambient noise was at or above the ordinances defined limit. The ordinance allows 5 or 10 decibels above the ordinance level depending on the time of day. Mr. Waters stated every night they take readings and monitor the noise on a regular basis and they take measures to ensure compliance with the code.

Mr. Vukelja asked the City's recommended for imposing a fine.

Mr. Jackson did not specify a specific amount but stated the City recognized the position of the Magistrate as the fines being progressive.

Mr. Jackson asked that Mr. & Mrs. Smith come forward.

Mr. Waters objected to the readings of the neighbor being entered as evidence based on the ordinance reading that the readings were to be taken by law enforcement.

Ms. Patricia and Mr. Donald W. Smith came forward and were sworn. Mr. Smith stated the last time they were before the Magistrate, the Management stated they could call and would work with them to turn the music down. Mr. Smith stated he has called Management but the last time he called the manager said he was tired of the complaints and was calling his attorney.

Mrs. Smith stated at times, depending on the band the outside band does get really loud. Mrs. Smith states the time they call are when they cannot hear the television inside and all their windows are closed. Mrs. Smith stated if they ignore the noise than it will just get louder and louder.

Mr. Vukelja stated what needed to happen was a balance and an effort on co-existing between the parties.

Mr. Jackson stated he believed the last time they were at the meeting the management was willing to communicate with the neighbors directly regarding complaints and was not sure if new management would be willing to do that.

Mr. Vukelja inquired about the ordinance as it relates to ambient noise and summarized the positions of the City and the Respondent.

Mr. Jackson inquired of Mrs. Smith if they called to complain on the July 2<sup>nd</sup>.

Mrs. Smith advised she did call the police department on July 2<sup>nd</sup> and said she showed a reading of 77 decibels from her sound meter.

Mr. Jackson stated the City was not relying solely on the hearsay of the officer but that they had witness testimony as well.

### Ruling

Mr. Vukelja found the City's evidence is insufficient to sustain a violation and therefore the notice of violation was dismissed.

Mr. Vukelja then described his issues of concern with regard to hearing the Management is not responsive any more to their complaints and further stated that he would not fine the Respondents today for the violation but that if the time comes when the City's presentation and the evidence align the Respondent's will be fined. Mr. Vukelja further advised he understood the City had a difficult burden to prove for these types of violations.

**CASE NO 11 SMG 10-11-103 – TLB Holdings, LLC and Terence Benn** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (ref.FBC Supp IPMC 301.3, 302.7, 303.10, 303.14), at **909 Kathy Street** - Violation(s) – Unsecured building, rotten wood and broken windows - First Notified – 5/15/2011.

Respondent was not present.

Mr. Jackson advised the City needed to amend the case style as there was some confusion regarding the LLC ownership. Mr. Jackson stated an LLC with the same name in Florida was noticed when the actual LLC owner is from Georgia. Mr. Jackson announced the correct address of the TLB Holdings, LLC.

Ms. Hampton advised she faxed the Notice of Violation and Notice of Hearing to the listed registered agent for Mr. Benn and his registered agent.

Mr. Jackson requested a continuance of the case to ensure they have proper service.

### Ruling

Mr. Vukelja amended the case style to reflect the correct ownership and further continued the case until the November 8, 2011 meeting.

**CASE NO 12 SMG 10-11-104 – Ethel L. Gilmore** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (ref. FBC 105.1), at **510 Fremont Avenue** - Violation(s) – Doing Work Without Permit - First Notified – 8/10/2011.

Respondent was in compliance October 11, 2011.

**CASE NO 13 SMG 10-11-105 – KACS Acquisitions, LLC** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1. (ref. FBC Supp IPMC 307.1); Art. 8 Sec. 2.7(a), at **S. Franklin Street - Parcel # 5239-02-05-0210 (Corner of Orange & Franklin)** - Violation(s) – Parking unlicensed boat on vacant lot and outside storage of debris - First Notified – 8/26/2011.

Respondent was in compliance October 11, 2011.

**CASE NO 14 SMG 10-11-106 – Johnny Van Sessions** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec. 1.1 (ref. FBC Supp IPMC 301.3 & 307.1), at **Orange Avenue (Parcel # 5239-06-27-0060)** - Violation(s) – Trash, Junk and Debris stored on property - First Notified – 8/19/2011.

Respondent was in compliance October 4, 2011.

**CASE NO 15 SMG 10-11-107 – Robert B. Irving** is cited for failure to correct violations of the Land Development Code, Art 19 Sec. 1.1 (ref. FBC Supp IPMC 307.1); Ch. 90-297(a) Code of Ordinances, at **360 Weaver Street** - Violation(s) – Trash, junk and debris; No occupational license for rental - First Notified – 8/16/2011.

Respondent was not present.

Mr. Lopez testified on behalf of the City and advised the property was partially in compliance with removal of the trash and debris however a rental license still has not been obtained. Mr. Lopez 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 to come into compliance by November 2, 2011 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

**CASE NO 16 SMG 10-11-108 – ADJ & SRJ Investments, Inc.** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (ref. FBC Supp IPMC 303.2, 304.13, 304.6,) Ch. 90-297 Code of Ordinance, at **215 Kingston Avenue**- Violation(s) – Windows/doors; Peeling Paint; Exterior surfaces; No occupational license for rental - First Notified – 7/26/2011 (Posted)

Darren Jafroodi came forward and was sworn. Mr. Jafroodi advised he was the managing partner for ADJ & SRJ Investments, Inc. Mr. Jafroodi stipulated to the violations.

Mr. Stenson testified on behalf of the City and stated there are numerous violation issues at the property including exterior surfaces, outside storage, and other items where nothing has changed and no progress has been made. Mr. Stenson further advised there were open permits for the property but no work has been completed. Mr. Stenson recommended the next cut-off for compliance.

Mr. Jafroodi stated they had to remove tenants and stated he was trying to work on compliance. Mr. Jafroodi stated he would prefer 90 days to get a contractor and correct the violations. Mr. Jafroodi stated there are 15 units but only 4 were occupied now because of zoning. Mr. Jafroodi stated there were less than 4 tenants because one passed away. Mr. Jafroodi stated he did not bring the zoning issue to the Board of Adjustment because of the cost analysis.

Mr. Jerry Gurley came forward and was sworn. Mr. Gurley advised there were 4 tenants but the woman died two weeks ago so now there are 3.

Mr. Stenson stated at least 7 or 8 tenants were residing there because at his inspection at least 7 or 8 people that have come out to talk to him.

Mr. Jafroodi said he did have a problem with people breaking in.

Mr. Stenson stated a licensed contractor would have to remodel each unit. Mr. Stenson recommended compliance with all the violations except for the occupational license in 45 days and within 45 days the contractor and permits be acquired.

Mr. Jackson stated the City was withdrawing the occupational license violation.

**Ruling**

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 7, 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 17 SMG 10-11-109 – Horace Smith, Jr.** 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 302.8, 304.2 and 304.6), at **816 N. Ridgewood Avenue** - Violation(s) – Outside storage; junk vehicle (trailer); peeling paint/dirt and grime; and exterior walls - First Notified – 8/9/2011.

Respondent was in compliance October 10, 2011.

**CASE NO 18 SMG 10-11-110 – Daniel W. Chambers** is cited for failure to correct violations of City Ordinance 90-297(a), at **536 Ruth Street** - Violation(s) – No occupational license for rental - First Notified – 7/19/2011.

Respondent was not present.

Mr. Stenson testified on behalf of the City and stated the property was in non-compliance and recommended the next cut-off date for compliance. Mr. Stenson advised the inspection was scheduled for November 4, 2011.

**Ruling**

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by December 7, 2011 or be returned to a subsequent meeting for consideration of a one-time administrative fine of \$250.00.

**CASE NO 19 SMG 10-11-111 – Meena Ramasami** is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (ref. FBC Supp IPMC 304.13 and 304.15), at **601 Mulberry Street** Violation(s) – Windows and Exterior doors - First Notified – 7/18/2011.

Ms. Meena Ramasami came forward and was sworn. Ms. Ramasami stipulated to the violations and advised she would have the property into compliance by the next cut-off date.

**Ruling**

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by November 2, 2011 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

**Miscellaneous Business**

1. Sgt. Miller introduced Hector Garcia as the new code compliance supervisor.

**ADJOURNMENT**

The meeting was adjourned at 10:25 a.m.