

TOWN OF LAUDERDALE-BY-THE SEA
CODE COMPLIANCE HEARING MINUTES
Town Commission Meeting Room
Thursday, March 20, 2014 at 4:30 P.M.

I. CALL TO ORDER, SPECIAL MAGISTRATE TOM ANSBRO

Special Magistrate Tom Ansbro called the hearing to order at 4:40 p.m. on Thursday, March 20, 2014. Assistant Town Manager Bud Bentley, Assistant Town Attorney Alan Gabriel, Town Planner Linda Connors, Code Compliance Officer Carmen Sanchez, and Planning Technician Juliana Cardona were present at the hearing. Also present was Clerk Idalia Gutierrez to record the minutes of the hearing.

II. SWEARING OF WITNESSES

The Special Magistrate administered the oath to all those present who intended testifying.

III. OPENING STATEMENT

Special Magistrate Tom Ansbro explained the procedures for the hearing.

IV. PUBLIC COMMENT

The Special Magistrate briefly explained the new State law and asked for public comments at this time or when the case was called. No one from the public spoke now.

Clerk Idalia Gutierrez called the only case to be heard today.

V. CODE CASES

1. CASE NO. 13110015 – 2 E Commercial Blvd.

ITEM #V.1

Case #: 13110015 – Zoning Violations

Property Owner: Anglin Fam Tr Demko, M H Trstee

Address/Folio: 2 E Commercial Blvd

Code Section(s): Chapter 30 – Unified Land Development Regulations Section 30-271.(2)ii 1-2 B-1 district – Business (2) Conditional uses.
Chapter 30 – Unified Land Development Regulations Section 30-261 (e)(1)
Chapter 30 – Unified Land Development Regulations Section 30-317(g)

Code Compliance Officer Carmen Sanchez testified that they were here today for certification of liens for two violations that were running fines and accruing. Fines for the first violation listed (Chapter 30/Section 30-271.(2)ii 1-2 B-1 district – Business (2) Conditional uses) started running on November 20, 2013 for 55 days at \$250/day. She answered that the second item listed was compliant (Chapter 30/Section 30-261 (e)(1)). For the third violation listed (Chapter

30/Section 30-317(g)), fines started running on February 17, 2014 at \$150/day. There is also a \$200 Administrative Fee. Ms. Sanchez gave a brief summary of what the violations were. The first violation was because they allowed any one to park as long as they paid. She had pictures that showed the signs advertising the parking lot. The third item was for the faded parking stripes. They needed to obtain permits and to re-stripe. They received their permit on March 5, 2014 but the work was not complete and there was no final inspection. She explained that the work was to be completed by February 16, 2014. The photos for the first violation were shown to Mr. Beggs, attorney for the applicant. Ms. Sanchez answered that previous Code Compliance Officer Tuchette Torres and Code Compliance Officer Sharon Foster took the pictures. She thought Mr. Bud Bentley as well. Attorney Beggs objected to any photographs being submitted without the person who took them being present. The Special Magistrate said that Tuchette Torres was no longer with the Town so she could not substantiate them. Mr. Bud Bentley was here but Mr. Alan Gabriel, Assistant Town Attorney, was asked to substantiate the authenticity of the photographs. He said he could substantiate them only to the extent that the photographs were part of the record for the files of the Town for this particular matter. They were public records and official records of the Town. The Special Magistrate asked if these photographs were shown to him at the original hearing. He was informed that the original photographs were previously shown to him but not the ones showing the continuation of the violation. Mr. Bentley, Assistant Town Manager and Director of Development Services, was asked if he took any of the photographs. He answered in the affirmative. He took the photographs dated November 27, 29, December 2 and 18, 2013. Mr. Bentley said that Tuchette Torres took the January 6, 2014 photograph and e-mailed it to him that day. He continued to testify that all of the photographs he took were sent to the Pier operator and many would have been sent to the Pier's attorney. Mr. Beggs objected to the entry of any of the photographs because they were immaterial to what they were going to discuss today. He stated that we were here to discuss if there were any violations to parking. He said they could use any sign they want. He felt the issue was who they let park there. The Special Magistrate overruled his objection. Ms. Sanchez submitted eight different pictures from eight different days. The Special Magistrate accepted the photographs as Town's Composite Exhibit. Mr. Gabriel requested if the Town could reserve their opportunity to respond to any further testimony or evidence that might come in, so they could address that. The Special Magistrate granted the request.

Mr. Beggs asked Ms. Sanchez if, to her knowledge, she knew that the parking lot was open on all those days in question and she replied that she did not. He asked if she knew from her own knowledge whether or not there was a violation of letting others park other than for the properties in the Order on those days. Ms. Sanchez answered that she was not working for the Town on those days, so she goes by the Town's file and evidence and pictures provided. She further answered that she has no personal knowledge of what transpired on those dates. Mr. Beggs moved to strike these charges as there was no confident evidence that anyone parked there. The Special Magistrate allowed the Town to refute. Mr. Gabriel testified that the violation was already found by the Special Magistrate. The question today was whether or not the violation came into compliance. The Town had testimony, evidence, and photographs of the ongoing, continuing violation beyond the Special Magistrate's ordered compliance date. He would also present further evidence as to whether or not there was a compliance inspection called for by the property owner. He stated that a compliance inspection has not happened. The Special Magistrate requested his presentation of evidence. Mr. Gabriel asked Ms. Sanchez if, to her knowledge, there was ever a compliance inspection called for by the respondent. Ms. Sanchez replied in the negative. Mr. Gabriel asked if the file indicated any compliance inspection and Inspector Sanchez replied again in the negative. Mr. Gabriel asked if the file contained a request for a compliance inspection. Ms. Sanchez said that the file contained the non-compliance inspection but no request for a compliance inspection. Mr. Gabriel asked Mr.

Bentley if he had ongoing knowledge of the case in this matter and the circumstances involving this matter. Mr. Bentley responded that he had knowledge to a limited degree. Mr. Bentley answered in the affirmation when Mr. Gabriel asked him if he would be aware if the matter was being inspected for purposes of compliance. Mr. Bentley answered the next question that he never heard that they requested a compliance inspection. There was an inspection requested on January 6, 2014 which was at Mr. Bentley's request. The finding was that the sign at the entrance to the parking lot was in compliance but the sign at the rear of the parking lot was not in compliance. He answered that it was not in compliance because they were using generic signage which represented public parking. To clarify, the signage attracts the public to use the parking for public purposes. Mr. Beggs asked Mr. Bentley if he was given a document that was presented to people in the parking lot indicating that it was purely parking for the Fisherman's Pier purposes. Mr. Bentley answered that he believed it was Mr. Beggs who sent him a copy of that document. Mr. Bentley answered that from his own knowledge, he was not aware if they were using that document. Mr. Gabriel brought to the Special Magistrate's attention that the Final Order called for an inspection which did not happen. Mr. Gabriel reserved the opportunity to present further testimony and evidence. Mr. Beggs said he had to correct the Town's Counsel that we were not here today to certify fines. At the hearing on (he believes) January 27th, a witness was not present and the hearing was continued for the purpose of bringing that witness in to certify there was a violation. This has not been done. Mr. Beggs stated that they were here in good faith to deal with this matter. There was no Order from this Special Magistrate that said they could not have a sign. Mr. Beggs said that the generic sign was not a violation of anything. The violation was if they take money for parking from someone who was not allowed to park. He said there has to be proof and not just suspicions. Mr. Beggs further stated that there was no proof that anyone parked in that parking lot except for the purposes of Fisherman's Pier. Mr. Beggs asked how they could call for compliance as it would have to be done every time they park someone. He felt that compliance was not an aspect and requested the Special Magistrate to dismiss that charge and to proceed as to the other matter. The Special Magistrate denied the request for dismissal as this time.

Mr. Beggs called his witnesses. Mr. Louis Marchelos testified that he was the owner of Fisherman's Pier. He answered that during this period of time, he was overseeing the operation of the parking lot. Mr. Beggs asked Mr. Marchelos what steps he took after the November 18, 2013 hearing. Mr. Marchelos testified that he wrote up a paper allowing parking only for Anglin Beach Café, Fisherman's Pier, Swim & Jog, Gelato, and the future Mulligans. He showed that paper to his attorney and to Mr. Bentley. The road was closed from November 18th to December 10th and those papers were given out to those who parked. The Special Magistrate asked for a copy of the document and it was supplied by Mr. Bentley. Mr. Marchelos answered that, to his knowledge, many people came to park but were told they could not park there. Mr. Marchelos answered the Special Magistrate that they only allowed individuals to park for the Town's allowable purposes. There was a \$2 charge for the Pier Café but for the other allowable establishments listed, the parking charge was \$5. Mr. Marchelos said he had pictures in his phone that showed on many days there was zero access onto the parking lot due to the Town's construction. There was no cross examination at this time from the Town but reserved the right to recall.

Mr. Spiro Marchelos answered Mr. Beggs that he was in attendance at the January Special Magistrate's Hearing. He answered that at that hearing, it was recessed so the Town could provide testimony. Mr. Beggs answered the Special Magistrate that Mr. Marchelos is the co-owner of Fisherman's Pier and he operates the café. Mr. Marchelos said it was never his intention to allow general beach parking via the signs installed. The intention was for parking only for Anglin Beach Café, Fisherman's Pier, Bait and Tackle Shop, Swim and Jog, Gelato

Place, and the construction being done for Mulligan's Restaurant. During the time in question, there was a lot of construction parking for Gelato and Mulligans. Other than that, they did not allow parking for the general public. He testified that during this period in time, they were shut down due to the Town's construction. There were times he could not even park in his own parking lot. The sign in question was not treated well due to the construction. The Town did not provide them with any signs. Mr. Gabriel cross examined this witness. Mr. Marchelos answered that the road was closed November, early December, many evenings and many days. There was no access in and out of our parking lot. It was continuous until around December 16th. He further testified that he did not know and was not given the Special Magistrate's Final Order in this matter.

Prakash Patel answered Mr. Beggs that he owns a parking service in south Florida. He stated that he commenced parking in the lot around December 13th or 14th. He answered that he met with Linda Connors and Bud Bentley shortly after they started the parking services in the lot. He showed them proofs of signs and he was not aware of any objections by them to the signs. He explained where the signs were located and what they depicted. He spoke about the flyer with the names of the establishments that individuals would have to frequent in order to park. Mr. Gabriel asked Mr. Patel if he recognized the flyer and he replied in the affirmative. Mr. Gabriel then submitted it to the Special Magistrate as Town's Exhibit. The Special Magistrate read the flyer. He asked Mr. Patel what they did with the flyer and Mr. Patel explained. The Special Magistrate asked Mr. Patel if his employees had the patron circle which establishment they visited. Mr. Patel said that they changed the flyer to leave out the required circling of the visited establishment. They changed the flyer to state a list of which establishments must be visited in order to be allowed to park in the lot. It was accepted into evidence by the Special Magistrate as Town's Exhibit 2. Mr. Patel answered that the person parking was notified three ways that parking was restricted: (1) signs, (2) flyer and (3) when time allowed the parking employee to verbally let the parkers know. Mr. Patel said they were still using these same three methods now. Mr. Gabriel asked Mr. Patel why one of the signs indicated public parking. Mr. Beggs objected to this question because it was not up to Mr. Patel to give expert interpretation for the language of the sign. The Special Magistrate allowed the question. Mr. Patel said the date on the sign was before his employment date, so he could not answer about the sign. The Special Magistrate asked Mr. Patel that when his employment commenced, was that sign posted at the parking lot. Mr. Patel was not sure. Mr. Beggs had no more witnesses at this time but reserved the right to recall.

Mr. Gabriel called Julianna Cordova from the Town. Ms. Cordova answered that she was the Planning Technician. She answered that as an employee, she was asked to go to the parking lot and park her vehicle. She explained to the Special Magistrate what transpired on December 16, 2013. She said that Mr. Bud Bentley asked her to go to the Pier parking lot. She went there and parked. She showed her original receipt for her \$5 parking fee. She said that she did not receive a flyer and no one spoke to her. She went downtown and visited a couple of stores. After about 15 minutes, she went back to her car and left. She then called Linda Connors and gave her the report. She answered the Special Magistrate that there was one person working the parking lot. That person did not inform her about who could park in the lot or ask her where she was going. She was shown the pictures of the signs but did not recall if they were there or not. She answered that she was not handed a flyer. Mr. Beggs was asked and answered the Special Magistrate that he would assume Mr. Patel's employees should have been there when she parked. Mr. Gabriel gave the Special Magistrate a copy of the valet parking receipt which was first shown to Mr. Beggs. That receipt was admitted into evidence by the Special Magistrate without objection as Town's Exhibit 3. Ms. Cordova answered Mr. Beggs that she went to Kilwin's and the pet store. She answered Mr. Beggs that she did not know if those two

stores were owned by Fisherman's Pier Inc. She answered Mr. Beggs that she did not window shop but rather just walked around downtown.

Mr. Gabriel then called Bud Bentley. Mr. Bentley answered that he did have communication with the property owner and/or representative regarding the signage, the flyer, and the process and procedure they were following. He said that Mr. Beggs sent him a copy of the notice (flyer) that was supposed to be provided to the drivers. Mr. Bentley said that on November 27, 2013, the Pier had two signs with one of them stating area parking. Mr. Gabriel asked Mr. Bentley if he had correspondence with the respondent or one of his representatives on the dates that were in question to which Mr. Bentley answered in the affirmative. Mr. Bentley started his narrative that Mr. Beggs objected to but the Special Magistrate allowed. Mr. Bentley continued that he corresponded with them multiple times to advise them of the Town's position. If they were advertising for area parking (beach parking), they were in violation of the Code and the Final Order of the Special Magistrate. On December 23, 2013, they had a meeting with their valets. They discussed correct signage. They then started to use a Pier parking sign which was in compliance because parking was only for the Pier and its related businesses. He explained that this was how they came into compliance because the signage changed to acceptable signage. Mr. Beggs asked Mr. Bentley where on the sign it stated that you could park on the beach. Mr. Bentley testified he did not say that. He was referencing the sign they had on El Mar which advertised area parking. Mr. Bentley said it was easier for him to say beach parking than paid private parking multiple times. Mr. Beggs thought it was prejudicial to his client when he called it beach parking. Mr. Bentley said they could not provide beach parking because they were not in compliance to their conditional use to begin beach parking. Mr. Bentley answered they came into compliance when they stopped advertising area parking or beach parking, whatever you wish to call it. Mr. Beggs asked where they were barred from using the phrase area parking. Mr. Beggs said it was Mr. Bentley's belief and interpretation that area parking was beach parking. He said his client had a different belief and interpretation regarding area parking. Mr. Bentley said that either they did have a different belief and interpretation or they thought they could get away with it thinking the Town would not enforce their Codes. From the date of the Order, the Town did not think their signs were consistent with the Code through January 6, 2014. Inspector Sanchez's files indicate the date should be through January 13, 2014. Mr. Gabriel said we cannot go back to whether a violation existed or not. The finding was already made that a violation existed. He asked the Special Magistrate to limit the questions to the issue at hand only. Mr. Beggs answered that the past hearing was recessed for additional testimony. The Special Magistrate asked for a copy of the Final Order from November 18, 2013 and read it into the record. What the Special Magistrate wanted to know from the Town unequivocally was how many days from November 18, 2013 did they allow parking without restricting to those named businesses. The Special Magistrate clarified that on November 18, 2013 he ordered an immediate cessation of parking except for the restricted businesses. He needed the days the violation occurred. Mr. Bentley said they observed their signage which was prima facie because they did not have a conditional use to provide area parking. Mr. Beggs had a picture that he showed Mr. Gabriel. Then he asked Mr. Bentley if he recognized the picture and read the words from a picture of a sign – parking area fishing and restaurants. Mr. Bentley answered that the sign said parking area (in part). Mr. Beggs submitted the picture to the Special Magistrate who accepted it into evidence without objection as Respondent's Exhibit 1.

The Special Magistrate was answered that the sign was there for a long time. The Special Magistrate noticed another sign in the picture and Mr. S. Marchelos answered that sign was there since about mid-December 2013. The Special Magistrate called a five-minute break

(around 5:25PM). The audio/video was running. When everyone was back in the room, they went back on record.

Mr. Beggs said Mr. Patel would like to speak. He said that right away, they reached out to Linda Connors and Bud Bentley to understand what the Town requested in order for them to be in compliance. They had the signs made that met the Town's approval. Their procedure met with Town's approval. On the day Ms. Cordona came out, maybe they did not meet with the Town yet to ensure compliance. He just wanted to point that out. Mr. Patel answered the Special Magistrate that the signs from Respondent's Exhibit 1 were not there when he started employment. Mr. Beggs had nothing else. Mr. Gabriel gave the exact violations as Chapter 30 - Section 30-271.(2)ii 1-2 B-1 district – Business (2) Conditional uses and Chapter 30 – Section 30-317(g). Mr. Gabriel stated that they were in violation of the conditional use permit restricted to paid parking only for the property in question. The Final Order gave them until November 19, 2013 to comply. Ms. Cordova parked with no restrictions on December 16, 2013. The Town was asking for certification starting November 20, 2013 through and including January 13, 2014. Signage was an issue up until January 13, 2014. There were many meetings and communications where they were asked to stop what they were doing and they did not stop. It was the action of making parking available to the public that was the violation without having approval to do such. This was not a repeat violation request so we did not have to prove that the violation happened every day. They did not call in or give any indication that they were in compliance. When they corrected the signage, they became compliant. They owe \$13,750 for a total of 55 days. Mr. Beggs referred to the Order that did not refer to signage or instructed how signage had to be created. He said that this occurred November 18, 2013 during the construction period. Signage could have been better but they were also handing out the document (flyer) telling people where they had to go if they parked there. Maybe it fell through the cracks one or more days. The Order stated \$250 a day for a violation. Mr. Beggs said that the Town established one violation. That equated to a \$250 fine. Before going onto the next violation, it was decided to rule on this violation.

The Special Magistrate said that he could impose the whole lien of \$13,750 and then he would lose jurisdiction. They could go to the Town Commission for abatement of the lien. **He was willing to establish a fine of \$2,000 with their stipulation that if it was repeated, the fine could be \$500 per day.** Mr. Gabriel asked the Special Magistrate how he determined \$2,000. The Special Magistrate said he heard mixed testimony. He also said the signage was misleading. This was not to be punitive but rather to get compliance. Mr. Gabriel said these were willful and wanton actions by the respondent who kept the signage up for the number of days identified. The Special Magistrate said it was misconduct but the Town could not establish every day that it happened. **Mr. Beggs testified that he stipulates to the \$2,000. Mr. Gabriel said we would accept that fine amount if the respondent would pay the money within thirty days at the maximum. Otherwise the entire amount would be identified and move forward in that respect. Mr. Beggs agreed. The Special Magistrate warned that the Pier had to operate within the confines of the law. If this comes back as a repeat violation, he would bring the full brunt of the fine to bear.** The Pier is a big player in this Town and should step up to the plate and fix any violations immediately. The Special Magistrate ordered a \$2,000 fine payable within thirty days or it would revert back to the original amount of \$13,750. The Administrative Fee is \$200, for a total of \$2,200 had to be paid within thirty days.

They went on to the next violation, re-striping. Code Compliance Officer Carmen Sanchez said they were to comply by February 16, 2014 in the Final Order. As of today, they were still not compliant but working towards compliance. They were accruing fines of \$150/day. As of today, it was \$4,800 and accruing daily. Mr. Beggs said they were not in compliance. He was not

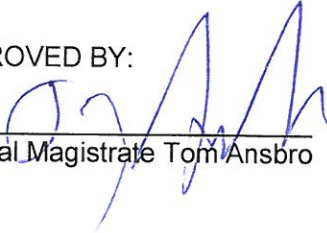
going to argue about that. They just received the permit. He said that Craig Unger, the engineer who has worked very closely with Linda, was here. Mr. Unger said that the Town has been very cooperative but it takes more time than anticipated. Mr. Unger said that his client asked him to secure a conditional use permit. He has been working on this with the Town for over four or five months. They have secured it and last week a building permit was issued for the work. The contractor has been selected. The work would start on Monday. The work should be completed in about two weeks. Then the striping and other work would be completed. Mr. Gabriel answered the Special Magistrate that this should have been finished by February 16th. Mr. Unger said that the governmental process just took longer than anticipated. Mr. Beggs and Mr. Gabriel had nothing further to say. **The Special Magistrate ordered the lien certified in the full amount of \$4,800. It would continue to run until in compliance. Mr. Beggs asked for the certification not to be in the full amount but the Special Magistrate said that it would be in the full amount. The Special Magistrate explained the process to seek abatement of the fine through the Town Commission.**

VI. FIRE CASES

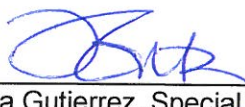
VII. ADJOURNMENT

Not having any additional business to be heard, Special Magistrate Tom Ansbro adjourned the hearing on March 20, 2014 at 5:52 p.m.

APPROVED BY:


Special Magistrate Tom Ansbro

ATTEST:


Idalia Gutierrez, Special Magistrate Clerk
Town of Lauderdale-By-The Sea, Florida