

TOWN OF LAUDERDALE-BY-THE-SEA

CODE/FIRE COMPLIANCE HEARING

MINUTES

Town Commission Meeting Room

Monday, January 28, 2013

4:00 P.M.

I. CALL TO ORDER, SPECIAL MAGISTRATE TOM ANSBRO

Special Magistrate Tom Ansbro called the hearing to order at 4:00 P. M. on Monday, January 28, 2013. Code Compliance Officers Tchetti Torres and Carmen Sanchez were present at the hearing. Also present was Eleanor Norena, Senior Office Specialist and Special Magistrate Clerk 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

The Special Magistrate explained procedures for the hearing to those present.

A. APPROVAL OF MINUTES OF PREVIOUS HEARING

December 17, 2012, Code Hearing – The minutes for December 17, 2012, were approved.

B. COMPLIANCES – Code Officer Torres noted that following cases were in compliance

1. C#:12120003 – 112 Commercial Boulevard
2. C#:12120007 – 4507 W. Tradewinds Avenue

IV. NEW BUSINESS - CODE CASES

ITEM #IV.4

***TAKEN OUT OF SEQUENCE**

Case #:12120012

Property Owner: NLV Inc.

Address/Folio: 238 Commercial Boulevard

Code Section(s): Chapter 30 - Unified Land Development Regulations Section 30-271(2)(h)

Officer Torres reviewed the case as indicated in the backup and detailed the violation as follows: bicycles stored in front of the property. She requested pictures she took of the property in 2012, specifically: March 21, June 25, November 16, and December 24, as they accurately depicted the current condition of the property. The property was now in compliance and she was not asking for any administrative cost to be levied.

The Special Magistrate admitted the photographs as Town Composite Exhibit "A" without objection.

Officer Torres entered into evidence a copy of the first violation issued to the property owner and a copy of the business license, noting the first time she came in contact with Ms. Hernandez's parents was in January 2012 when they first opened the bicycle shop. On April 17, 2012, she opened a code case due to the bicycles being stored in front of the store, having already advised the Hernandez's with the type of property rental and business licenses they

had, they could not store the bicycles in front of the store. A complaint had been lodged by the Town's Zoning Department, and she spoke with the Hernandez's translator, Carlos, on April 10 and 16, 2012, leaving messages, and eventually spoke to the property owner, who stated he would take care of the violation. Officer Torres noted in June 2012, she again observed the bicycles being placed in front of the store and issued a notice of violation that she turned in, and the property came into compliance on July 12, 2013. On December 5, 2012, she called the property owners about storing the bicycles in front of the property, and he stated he would speak to his tenants again and have the bicycles removed. On December 24, 2012, she saw the bicycles in the front of the store, but got advice from the Town that since the violation was recurring, even if they kept coming into compliance after each violation, the matter should be brought forward to the Special Magistrate for a final order to prevent any recurrence of the violation. Prior to December 5, 2012, Mrs. Hernandez came into the code office asking if there was a permit that allowed the bicycles to be displayed in front of the store, and she was advised at that time there was no such permit, as such activities were prohibited by Town code.

Mary Hernandez apologized for the repeat violations, stating they would no longer put the bicycles out in front of the store.

The Special Magistrate asked if Ms. Hernandez was the owner/operator of the business, which she affirmed she was, and he explained the recurrence of the violation was the issue. If there was a repeat violation henceforth, it would pose a significant problem for the business owners, as he would impose a very harsh penalty, regardless of Ms. Hernandez's apologies.

Ms. Hernandez indicated they now had a clear understanding of the situation and there would be no repeat violation.

The Special Magistrate inquired if Officer Torres was seeking the imposition of a fine.

Officer Torres answered no, the business/property owners were currently in compliance and, in their defense, they were really trying to work to make their business successful, and they were very nice people.

Ms. Hernandez asked if it would be considered a violation if customers had two bicycles, and one waited outside with one bicycle while the other brought their bicycle inside the shop.

Officer Torres replied in such situations, it was fine to have someone waiting with a bicycle in front of the store, as long as this activity did not continue for an hour or two hours; Town staff was aware Ms. Hernandez's family ran a bicycle shop, so it was acceptable for customers to park and do business and then leave.

The Special Magistrate clarified the business owners were not allowed to display bicycles outside, in front of the store for long periods of time, though he understood their need to show their product to the public to attract business. It might be smarter to have clients bring their bicycles inside the shop to prevent any chance of the violation recurring. He pointed out it was clear Officer Torres and the Town wished to work with Ms. Hernandez and her family and help their business succeed, but they were required to comply with the Town's codes, informing her there would be no fine imposed on them at the present hearing.

ITEM #IV.6

***TAKEN OUT OF SEQUENCE**

Case #: 12090016 - Certification of Lien

Property Owner: Benjamin Howard

Address/Folio: 218 Pine Ave.

Code Section(s): Chapter 30 - Unified Land Development Regulations Section 30-477(a)

Officer Torres reviewed items IV.6 - case# 12090016 and IV.7 - case# 12090017 in one presentation, as it pertained to the same property address. As indicated in the backup, for case # 12090016, the property came into compliance just prior to the final order being issued. At present, only the \$50 administrative cost was owed. She noted for case # 12090017, the property was brought into compliance on December 14, 2012, so the fine ran for 28 days, totaling \$1,400 plus the \$50 administrative cost. The violation was in reference to a vehicle having an expired tag.

Benjamin Howard, property owner, remarked he had been working very well with Officer Torres through the various issues associated with his property and thought he had been very cooperative and communicative, and he believed everything was fine. He later discovered after the car in question had been moved and taken care off, when he wrote

Officer Torres to inform her the violation had been rectified, she told him with the exception of the accumulated fine, of which he had been unaware until that point. The car had been removed from his property and would not be back, and there would be no repeat violation; he was not able to pay the fine.

Officer Torres commented the Town abated and dismissed fines for people in better financial positions than Mr. Howard's, stating he was correct in his statements that he maintained contact with her through email, but did not respond to the certified letters, so everything had to be posted. She visited the subject property and acknowledged it appeared Mr. Howard's financial problems were legitimate and, therefore, she requested both abovementioned fines be abated to zero dollars, including the administrative fee.

The Special Magistrate said Mr. Howard was fortunate, as it was not common for the administrative fee to be abated by the Town, so he hoped there would be no repeat violations.

Mr. Howard responded there would be no more cars with expired tags in his driveway again.

ITEM #IV.7

***TAKEN OUT OF SEQUENCE**

Case #: 12090017 - Certification of Lien

Property Owner: Benjamin Howard

Address/Folio: 218 Pine Ave.

Code Section(s): Chapter 6 - Building and Building Regulations Section 6-41(a)(12)

Addressed under Item #IV6

ITEM #IV.3

***TAKEN OUT OF SEQUENCE**

Case #: 12120011

Property Owner: Dyane Breitberg

Address/Folio: 1931 Waters Edge

Code Section(s): Chapter 6 - Building and Building Regulations Section 6-38(2)

Officer Sanchez reviewed the case as indicated in the backup and detailed the violation as follows: a pool with stagnant water. She wished to enter into evidence pictures of the property she took on January 26, 2013, stating they accurately depicted the current condition of the property and the associated violation. She spoke with the property owner, Dyane Breitberg the previous Saturday, who mentioned the house at the site was vacant, and a pool company had been hired to clean the pool, so she thought the matter had been rectified. Ms. Breitberg provided Officer Sanchez with the information for the pool company she hired and she called them. The pool company returned Officer Sanchez' call earlier in the day of the present meeting, and the company claimed they were taking care of the pool, which the pictures she entered into evidence disproved. An employee from the pool company called Officer Sanchez back, stating each time their company went to Ms. Breitberg's property to treat the pool and turn on the pump, the neighbor went onto the property and turned the pump back off. Officer Sanchez said she had no evidence this was really taking place. The pool company representative assured her the pool would be clean within two days.

The Special Magistrate asked if the pool area was accessible to the general public.

Officer Sanchez answered no, the pool was fenced in. She went on to state the first set of pictures she turned in were taken when she first issued the violation, and the second page of the documents she submitted into evidence comprised the pictures she took of the property the past Saturday. The pool did look better but the water was still stagnant.

The Special Magistrate ruled the property owner would be given a week to come into compliance, and directed Officer Sanchez to give Ms. Breitberg a call to notify her of the extended deadline, mentioning to her the possibility that someone might be turning off the pump after the pool company serviced the pool and left the property. He suggested, if the property owner discovered a neighbor was in fact turning off the pump, she should warn them via the police that if they came onto her property again, they would be committing the crime of trespassing. The problem might be that the pool's pump was making a lot of noise, so that possibility should be looked into, and if this was the problem, the property owner needed to fix it, so it would no longer disturb her neighbors. He recommended Officer Sanchez try to be present when the pool company serviced the pool, so she could hear if the pump made any disturbing noises while running.

Officer Sanchez asked the Special Magistrate to assess the property owner an administrative fee of \$50.00.

The Special Magistrate ordered an administrative fee of \$50 plus \$50 per day if the property was not brought into compliance in one week's time from the present day. He instructed Officer Sanchez to inform the pool company that a fine would begin running on the property if the pool was not fixed in one week.

ITEM #IV.5

***TAKEN OUT OF SEQUENCE**

Case #: 12060005 - Certification of Lien

Property Owner: Rose Santomassino

Address/Folio: 255 Hibiscus Ave.

Code Section(s): Chapter 6 - Building and Building Regulations Sections 6-36(5), 37(1)(a), 40(a) and 41(a)(2)

Officer Torres reminded the Special Magistrate the subject case was one on which he stopped the fines running to allow her to contact the elderly property owner; she spoke with her son, as they had an emergency with an electric problem and the son came to the Town to apply for a meter permit. She met the son at the property and she went over the various violations with him, and the son stated the property would be brought into full compliance by the end of December, as he was a realtor. The intention was to sell the house, and he would clean up the property and get a permit to fix the garage. She said, to date, the above violations remained, and there was no open permit for the garage; the certified green card informing the property owner of the hearing was signed and returned to the Town, but the son had not contacted her since then. As indicated in the backup the violations continued to be junk and trash on the property. She wished to withdraw violations one and five: Chapter 6, sections 36(5) and 41(a)(2); the first had to do with the fence, whereby a chain-linked fence was installed years ago, and there was now a wooden fence, and the property owner and the neighbor were arguing about who the fence belonged to, so she needed to research the matter further. If she had to recite both the subject property owner and the neighbor, she would. On the fifth violation listed, she said there was still junk and trash, but not outside storage, as they could not be seen from the roadway. Officer Torres questioned when the Special Magistrate wished to have the fine commence, whether from the August 21st date or from the date the Magistrate gave the property owner time until, which was the October date.

The Special Magistrate preferred to order the fine to commence after the October date.

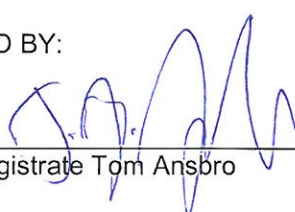
Officer Torres commented on being unsure what was happening with Ms. Santomassino and her health, and she believed she continued to reside at the subject residence but did not answer the door. The fines started running October 17, 2012, at the rate of \$150 per day for the two violations, and the property was still out of compliance at 104 days, totaling \$31,200.

The Special Magistrate ordered that the lien be certified but reduced to a more manageable sum of \$25 per day per violation for the three remaining violations retroactive to October 17, 2012; that brought the amount to a quarter of the current total or \$5,200.00. The owner's son could later request a reduction of the lien amount after the property came into compliance. He suggested Officer Torres try to contact the son to apprise him of the subject ruling.

VI. ADJOURNMENT

Not having any additional business to be heard, Special Magistrate Tom Ansbro adjourned the hearing on January 28, 2013.

APPROVED BY:


Special Magistrate Tom Ansbro

ATTEST:


Eleanor Norena Secretary for Special Magistrate
Town of Lauderdale-By-The-Sea, Florida