

NON APPROVED

**TOWN OF LAUDERDALE-BY-THE SEA
PUBLIC NUISANCE VIOLATION/
CODE COMPLIANCE HEARING MINUTES
*Town Commission Meeting Room
Tuesday, July 15, 2014 at 4:00 P.M.***

I. CALL TO ORDER, SPECIAL MAGISTRATE TOM ANSBRO

Special Magistrate Tom Ansbro called the hearing to order at approximately 4:02 p.m. on Tuesday, July 15, 2014. Town Attorney Alan Gabriel, Town Planner Linda Connors, Code Compliance Inspector Carmen Sanchez, BSO Lieutenant Thomas Palmer and BSO Detectives Eric Weiner and Brad Riddle 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. The Special Magistrate briefly explained the new State law.

IV. PUBLIC COMMENTS

The Special Magistrate asked for public comments at this time or when a case was called. No one from the public spoke now.

V. CODE CASES

Clerk Idalia Gutierrez called the first case to be heard.

ITEM #V.1

Case #: 14040042 – Nuisance

Property Owner: Firmrock Trading Ltd.

Address/Folio: 4245 N Ocean Dr.

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

Chapter 6 – Building and Building Regulations Section 6-36(a)

Chapter 6 – Building and Building Regulations Section 6-36(d)

Chapter 6 – Building and Building Regulations Section 6-36(e)

Chapter 6 – Building and Building Regulations Section 6-37(a)(1)

Chapter 6 – Building and Building Regulations Section 6-37(a)(2)

Chapter 6 – Building and Building Regulations Section 6-38(1)

Chapter 6 – Building and Building Regulations Section 6-41(a)(12)

Chapter 6 – Building and Building Regulations Section 6-41(a)(18)

Code Compliance Inspector Carmen Sanchez said that the property is a motel. The Notice was sent via certified mail and service was obtained. The Notice was also hand delivered to Mr. Wagner Russo. For the record, all of the violations cited in the Notice were currently in compliance. Some of these violations were repeats from Code Case #12090001 which was cited in September 2012 and came into compliance prior to the Hearing in November 2012. On April 16, 2014, Ms. Sanchez conducted an inspection along with the Fire Marshall and found property maintenance violations. Some rooms had ceiling damage, damaged kitchen cabinets, peeling paint, some windows and a/c screening were broken, broken window blinds, and peeling paint in the exterior. Some rooms had missing electrical outlets and bulbs. There was vegetation and trash and debris throughout the property. There was a vehicle in the parking lot with an expired tag. Ms. Sanchez showed pictures that accurately depict the condition of the property to Mr. Russo. The Special Magistrate entered them into evidence as the Town's Composite Exhibit without objection. On May 21st and June 4th, 2014, Ms. Sanchez took more pictures that showed the progress and showed the property in compliance. She wanted to submit that into evidence as well as the Property Appraiser's Record and ownership information. The Special Magistrate entered them into evidence as the Town's Composite Exhibit 2 without objection. As all the violations are in compliance, for the record Ms. Sanchez listed the recurring violations as 30-477(A), 6-36, 6-37, and 6-41. She was requesting a finding of the fact and Administrative Costs of \$250.

The Special Magistrate made the Finding and ordered the Administrative Costs to be paid within one month by August 14, 2014. Ms. Sanchez answered the Special Magistrate that there are 21 units in a single-story building. She answered the Special Magistrate that she explained the repeat violation process to Mr. Russo. She informed him that if it happens again, the daily fine could be \$500/violation. The Town finished presenting and no one else wished to speak. The next item was called.

ITEM #V.2

Case #: 14050014 – Nuisance

Property Owner: Firmrock Trading Ltd

Address/Folio: 4245 N Ocean Dr

Code Section(s): Chapter 14 – Offenses Section 14-90(b)

Attorney Alan Gabriel testified on behalf of the Town. He said that this is a nuisance violation case and a Notice to Appear was issued to the property owners. The business owner is Dolphin Harbor Inn and the property owner is Firmrock Trading Ltd. Code Compliance Inspector Carmen Sanchez testified that the Notices were sent via certified mail and service was obtained. Mr. Gabriel said that the Notice to Appear would be submitted to the Town as Exhibit 1 and the Special Magistrate accepted it without objection as the Town's Exhibit 1. Mr. Russo was asked to raise his hand if he had any questions for Mr. Gabriel or needed anything clarified. Mr. Gabriel said that ownership of the real estate was determined by looking at the Property Appraiser's Records and Information that the Special Magistrate saw in the previous case. Firmrock Trading Ltd. was listed in the Property Appraiser's Records. Corporate records show Firmrock Trading Ltd. as owner as well. Ownership information was accepted without objection as the Town's Exhibit 2. Under the regulations of the Town, the business operator is also liable for activities. In this case, it would be Dolphin Harbor Inn at 4245 N Ocean Drive. The corporate records were submitted without objection as Town's Exhibit 3. The regulations that were pertinent to today's hearing, pursuant to State Statute Section 893138 for drug related activity occurring more than twice in a six-month period allowed local administrative action by finding violations of nuisances. Mr. Gabriel said we would have testimony today from the Broward Sherriff's Office (BSO). Mr. Gabriel described the process and procedure for the Town

in Chapter 16209 which allows for the Special Magistrate process. This was codified in Section 14-90. He explained how both parties were brought before the Special Magistrate. He spoke about Florida Statute 823.05 and the relevancy of today's hearing to Statute 893.138. The first offense in Enforcement is \$250 and the second offense is \$500. A violation irreparable in nature could be up to \$5,000. Mr. Gabriel said that the Town is seeking the irreparable fine of \$5,000 per owner and per operator. Mr. Gabriel inquired of Mr. Russo if he needed clarification or wanted to speak. Mr. Gabriel then called upon Lieutenant Palmer. He is the officer who has taken charge of this matter since the beginning and would specifically describe the violations.

Lieutenant Palmer testified that he is the executive officer in the Lauderdale-By-The-Sea District. He gave his employment history with BSO. He stated that he has historical knowledge of this property. He explained about the numerous arrests in and around the property. The BSO, Lauderdale-By-The-Sea, and Mr. Russo had a meeting in 2012 regarding narcotic activity arrests. In September 2012, the Town issued a Warning to Mr. Russo notifying him of the narcotic activity and the nuisance abatement law. Mr. Gabriel submitted the Warning and the Special Magistrate admitted it into evidence without objection as the Town's Exhibit 4. Lieutenant Palmer explained how many of the arrests were for repeat violators who returned to the property to be arrested again on narcotic charges. The Lieutenant answered the Special Magistrate that there were discussions with Mr. Russo about the repeat violators. He said that from November 2013 through March 2014, there were three violators identified in Town Notices. The Lieutenant testified that the three cases are still pending final arraignment with the State Attorney's Office. He answered Mr. Gabriel that the three violators in the Town's Notices are the same three with pending status with the State Attorney's Office. He explained what the drug offenses were on the property. The arresting officers were present today. Mr. Gabriel said that these three crimes were actual felony, criminal arrests within a five-month period to be heard under Nuisance Abatement. Mr. Gabriel said they were going to present why the Town feels these fines are extraordinary and asking for the \$5,000 fine from both the business owner and property owner.

Lieutenant Palmer spoke about his snapshot timeline of arrests and re-arrests on the property for people residing on the property which included one deceased person who overdosed on the property. The lieutenant displayed this chart of approximately 27 people with extensive criminal histories from the end of 2011 to March 2014. Lieutenant Palmer answered the Special Magistrate that Mr. Russo was advised of the situation. The Special Magistrate was told that any examination of the arresting officers would be extremely limited because the cases are still pending and this is a public hearing. The Special Magistrate just required confirmation of the three arrests from the officers. Mr. Gabriel gave a copy of what Lieutenant Palmer displayed and explained. It was entered into evidence by the Special Magistrate as Town's Exhibit 5. Mr. Russo had an objection to this piece of evidence. The Special Magistrate asked him to speak into the microphone. Mr. Wagner Russo and Ms. Adelaide Geer identified themselves for the Special Magistrate. Mr. Russo said that in his Notice of Violation, only three cases were cited. The Special Magistrate said that the chart establishes relevancy with a pattern and a history. Mr. Russo was only being cited at this Hearing for what was cited on his Notice. The Town has to prove to the Special Magistrate that those three cases happened within a six-month period. The Special Magistrate said that they could cross-examine the officers after they testify.

Lieutenant Palmer called Detective Eric Weiner to testify for the first case cited in November 2013. The detective answered the Special Magistrate that he is with BSO for 14 years and with Lauderdale-By-The-Sea for approximately 7 years. He pointed to the name on the chart who was arrested on November 1, 2013 for cooking crack cocaine in the microwave in the room. He answered that this felon was arrested numerous times. The detective did not know if Mr. Russo

was informed that this individual was arrested before on a drug offense. Mr. Russo and Ms. Geer did not have questions for the detective. Lieutenant Palmer then called Detective Brad Riddle to testify about his two drug arrests. The detective is with BSO for approximately 18 years and associated with Lauderdale-By-The-Sea approximately 1 year. He spoke about working undercover. He identified the person arrested on the chart and spoke about the selling of Alprazolam (Xanax). The whereabouts of the offender is unknown as there is an outstanding warrant. His second case was in March 2014. Detective Riddle was again working undercover. A resident at the Dolphin Harbor Inn was selling Alprazolam. He read his other offenses from the chart into the record. There were no other questions for this detective. Mr. Gabriel said that concludes the verification of the three arrests within a six-month period for the nuisance matter. Mr. Russo and Ms. Geer testified that they had no questions for Lieutenant Palmer. Mr. Gabriel summarized that the actual violations were brought before the Special Magistrate and why the Town classifies them as a Nuisance and why the Nuisance occurred. He said that Lieutenant Palmer would speak about the items the respondent were cited for and how to bring the property into compliance so there would be no further violations. The Town asked the Special Magistrate to take into consideration the items that were being identified now by the lieutenant.

Lieutenant Palmer said that he listed eleven recommendations in a memorandum he wrote to Alan Gabriel regarding the subject of Nuisance Abatement: Dolphin Harbor Means of Correction Recommendations dated May 8, 2014. Mr. Gabriel said that a copy of the May 8th internal memo was given to the counsel for the respondents at the time. The respondents are not represented at the moment. The Special Magistrate accepted the memo and the attachments into evidence without objection as Town's Composite Exhibit 6. The lieutenant read all eleven recommendations into the record and explained if they have been worked on or were still pending. Mr. Russo started to explain but was told that he could explain when all eleven recommendations were read. The lieutenant answered the Special Magistrate's questions. Mr. Russo changed his mind and did not have further comments or questions regarding the recommendations. Mr. Gabriel testified that the owner has performed some of the recommendations from the memo. The Town was unsure whether all the eleven recommendations were accomplished. The Town was asking for the Special Magistrate to (1) find that there were violations that did in fact exist for both owners, (2) assess a fine to both owners of \$5,000 each, (3) assess investigative costs to BSO for approximately \$3,200, (4) assess costs for counsel bringing forth the history of this case that the Town should not be responsible for in the amount of \$11,798 (which was explained and broken out), and (5) issue an Order to include a status conference date to determine whether or not the respondent and the owner have done what was requested of them and (6) maintain jurisdiction on this matter. Mr. Gabriel said that there has been no further criminal activity and code violations at the property that we are aware of since the case started. The respondent has taken responsibility. Mr. Gabriel presented his case and was resting subject to whatever comes back.

Mr. Russo and Ms. Geer stood at the microphone. Mr. Russo testified that he has two companies. One company runs his business and the other company owns the property. He further testified that Ms. Geer is a friend who also works for him. The Special Magistrate informed Mr. Russo that he was impressed with what Mr. Russo has accomplished before he was ordered to accomplish them. Ms. Geer said they did not have anything to say about the first arrest in November 2013. The Hearing Notice stated that Hatfield was arrested on March 14, 2014 but it was crossed out and entered as April 3, 2014. He is entered in the system as April 3rd. She asked why there are discrepancies to the arresting date. Mr. Gabriel said that Ms. Geer had the Case Summary Report. Lieutenant Palmer looked at the Police Report. Mr. Gabriel said that if it is a date question, it would still be within the six-month time period and not have a material effect to the case. Lieutenant Palmer said that the crime occurrence was March

14, 2014 with probable cause for arrest. The police were unable to find the criminal and arrest him until after that March date. Ms. Geer said the charges in that matter were reduced to possession. This was not a re-occurring crime. The Special Magistrate explained the Statute that the person committing the crime might not be re-offending but the crime itself might have been re-occurring. Ms. Geer said that the person was not living at the property at that time but was just visiting. Lieutenant Palmer said he was subsequently arrested on property (he did not have to live on property). Detective Rand Riddle stated that the person might have been visiting but was living on the property at the time of the arrest. He did deliver Alprazolam to the undercover policeperson and he was arrested at a later date on the property. Mr. Russo said that he saw him walk out of the property and get arrested off property. The detective disagreed and said he arrested him in the Dolphin Harbor Inn. There is an outstanding warrant for the charges of possession and delivery. Ms. Geer said the third case was disposed because there was not enough evidence. Lieutenant Palmer said the resident was co-defendant on the search warrant. She was sharing the location, however, the other case continues on and is still active. Mr. Gabriel clarified that the activity is what is in question. The outcome has nothing to do with the criminal act which did exist. The Special Magistrate said that the person did not have to be convicted for the charge to be operative. Lieutenant Palmer said that this case is still continued because there were two listed on the search warrant. One had the charges dropped but the other still continues. Mr. Gabriel said that in all three cases, the activity occurred on the property within a six-month period. They were felony charges and they were identified. The Statute takes all kinds of situations into consideration. Mr. Russo stated that in his point of view, he only had one violation and not three. All Mr. Russo wants is to clean up the property and he thanks everyone who helps in that aspect. He answered that he owns this property almost four years.

Based on the evidence and sworn testimony, the Special Magistrate finds that the three offenses did occur within the six-month period. Under the Statute, if more than two narcotic activity crimes happen within a six-month period, a nuisance violation was established for the three offenses. **The Special Magistrate warned Mr. Russo that the criminal activity pattern has to stop today or he runs the risk of so many fines leading to liens. Even though the Town would not want to, it could foreclose on his property due to liens.** He informed Mr. Russo he is the first Nuisance case and he hopes he is the last for the Town. **The Special Magistrate wanted Mr. Russo to meet with Lieutenant Palmer and BSO to ensure all eleven recommendations listed on the internal memo are accomplished. For the September 15, 2014 Special Magistrate Meeting, there would be a special agenda for a Status Conference for Mr. Russo and BSO to give an update regarding the eleven recommendations and any criminal activity.**

Mr. Russo expressed concern about lease documents because he gets clients from the internet and they will not want to sign lease documents. The Special Magistrate said that for control of the property, he would have to do this. Lieutenant Palmer said that the Lease Addendum Agreements are for Mr. Russo's protection and has nothing to do with the Town. **The Special Magistrate said that this is not going to continue here and that Mr. Russo will have to have all guests sign the Lease Addendum Agreements.**

The Special Magistrate imposes the \$5,000 fine per case but will withhold the obligation to pay them until he hears the update at the Status Conference. Right now, he assesses \$1,500 (up to \$5,000) per case for a total of \$3,000 for this activity. He retains jurisdiction so that if he chooses to remove the other \$7,000 that the Town is seeking, he could do that after the update at the Status Conference. Under the Statute, he could maintain jurisdiction up to one year.

The \$3,000 fine assessed today would be payable within 30 days by August 14, 2014. Mr. Russo would have to pay the \$3,200 for the work of the BSO officers. This amount to be paid within 90 days. For the attorney fees the Town paid in an amount over \$11,000, the Special Magistrate imposes \$2,000 to be paid within 90 days. The remaining \$9,000 would be decided after hearing the update at the Status Conference. This would be due in ninety days by October 13, 2014. The Special Magistrate amended the date of the Status Conference to the October meeting date of October 20, 2014. In this way, all fines identified by the Special Magistrate today would have to be paid before the new date of the Status Conference (October 20, 2014). The Special Magistrate retains jurisdiction and would keep this case for one year from today. He cautioned Mr. Russo again about any further problems. The Special Magistrate asked Ms. Geer if she had any questions. There were no other comments or questions.

VI. ADJOURNMENT

Not having any additional business to be heard, Special Magistrate Tom Ansbro adjourned the hearing on July 17, 2014 at approximately 5:26 p.m.

APPROVED BY:

Special Magistrate Tom Ansbro

ATTEST:

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