

APPROVED

TOWN OF LAUDERDALE-BY-THE SEA
CODE COMPLIANCE HEARING MINUTES
Town Commission Meeting Room (Jarvis Hall)
Thursday, June 24, 2021 at 5:00 PM

I. CALL TO ORDER, SPECIAL MAGISTRATE TOM ANSBRO

Special Magistrate Tom Ansbro called the hearing to order at approximately 5:03 PM on Thursday, June 24, 2021 with Town Attorney Alan Gabriel, Senior Code Inspector Bethany Banyas, and Planning Technician/Special Magistrate Clerk Sydney Ramirez to record the minutes.

II. SWEARING OF WITNESSES

The Special Magistrate administered the oath to everyone speaking today.

III. OPENING STATEMENT

Please note for the record that this in-person hearing was also combined with virtual attendance using communications media technology via Zoom platform.

IV. PUBLIC COMMENTS

No one from the public wished to speak now.

Cases were typed in the order they were called starting with if someone was remotely present via Zoom platform.

V. CODE CASES
NEW BUSINESS

ITEM #V.1

Case #: 21060002 – Noise Violations

Property Owner: Sealand Management LLC (owner) TacoCraft (tenant)

Address/Folio: 4400 N Ocean Drive

Code Section(s): Chapter 30 – Unified Land Development Regulations – Section 30-271 (h)(6)b

Senior Code Inspector Banyas testified that this case was a repeat violation for 4400 N Ocean Drive. The violation was that live and/or amplified music was prohibited within the confines of an outdoor seating area but music was played there. At the May 27, 2021 Hearing, the Special Magistrate issued a Finding of Fact that the violation existed and that it was complied prior to the May 27, 2021 Hearing. She reminded the Special Magistrate that he stated if this violation came back in front of him within five years, it may be deemed a repeat violation. After the Final Order was issued, on Friday, June 11, 2021 at approximately 1:40PM to 1:45PM, the violation was observed to reoccur. Music was set up with equipment in the outdoor seating area. The Repeat Violation and Notice of Penalty Hearing was issued and hand delivered to the manager on Saturday, June 12, 2021. The Town had evidence to submit for the record of two photos showing

the music being played outside on June 11th as well as a copy of the original Final Order. The registered agent, Sam Weiss, was in attendance at the May hearing. The Town's evidence was emailed to Mr. Weiss to give him time to review. Mr. Weiss answered the Special Magistrate that he did not receive the email but had no objection to the evidence. The Special Magistrate accepted the evidence into the record without objection as Town Composite Exhibit. Inspection Banyas reminded the Special Magistrate that a repeat violation fine was typically \$500/day, if the Special Magistrate chose to assess that amount for this one-day fine. If the \$500/day fine was assessed, the Town requested that it would be recorded as a lien on the property if the fine was not paid by July 20, 2021. The Town was also requesting \$100 Hearing Costs for today's hearing.

Mr. Weiss, who attended virtually, testified that he was the representative of both TacoCraft (restaurant) and Sea Laud (property owner) and he was sworn in by the Special Magistrate. He stated that he understood that the event occurred, and that the new manager on duty on June 11, 2021 did not know the rules. As soon as there was some type of notification, their main manager, David, would come out and fix the problem immediately. They were trying their best but hiring and maintaining staff was very difficult. The playing of music outside was not intentional. Mr. Weiss answered the Special Magistrate that the music was booked and that this same person was there before and was told not to play outside. When the musician arrived, the new manager inadvertently told him to set up outside. The Special Magistrate stated that he would go with the recommended fine amount but if this came back again, he would go with whatever the allowable maximum fine amount was until this stopped happening. The Special Magistrate ordered that the repeat violation occurred and assessed a \$500 fine for the one-day repeat violation plus \$100 Hearing Costs due within thirty days (by July 25, 2021) or it would be certified as a lien on the property. Town Attorney Alan Gabriel, who attended virtually, asked for some direction and the Special Magistrate clarified his order to read: The Special Magistrate found that the repeat violation occurred for one day and he assessed a \$500 fine for the June 11, 2021 repeat violation payable by July 26, 2021 plus \$100 Hearing Costs due within thirty days (by July 26, 2021) and if not timely paid, he certified that the Town could record the monies owed as a lien on the property.

OLD BUSINESS

ITEM #V.8

***TAKEN OUT OF SEQUENCE**

Case #: 21050004 – Noise Violations

Property Owner: William V Ciani Jr Rev Tr Ciani, William V Jr Trstee

Address/Folio: 112 E Commercial Blvd

Code Section(s): Chapter 17 – Streets, Sidewalks, and Other Public Places –
Section 17-89(g)(1)
Chapter 30 – Unified Land Development Regulations – Section
30-271 (h)(6)b

Senior Code Inspector Banyas testified that the owner of the property was William Young. The tenant was Even Keel Restaurant and the business owner was David MacLennan who was in attendance today remotely. The two violations were for live and/or amplified music being prohibited within the confines of an outdoor seating area and also being prohibited within the confines of a sidewalk café area. To clarify, a sidewalk café was typically on Town owned right-of-way and an outdoor seating area was on the property owner's property. The music was set up on both of these sections. Inspector Banyas had photos, an email, and a report to submit into evidence.

On April 8, 2021, a Courtesy Warning was given verbally by the Broward Sheriff's Office (BSO) to the business owner, David MacLennan, and a printout of the ordinances in question was given

to him. There was compliance when the band was observed leaving at around 11:00PM. On Saturday, May 15, 2021, at approximately 4:45PM, a Courtesy Warning was given verbally by Code Compliance (Inspector Banyas) to the owner with another printout of the violated ordinances. Compliance was achieved when the musician departed after 7:00PM. On Thursday, May 21, 2021 at approximately 7:15PM, another Courtesy Warning was given by BSO to David MacLennan who told the officer that they would continue playing until their scheduled departure time of 10:30PM. On May 21, 2021 a Notice of Violation/Notice of Hearing was issued and hand delivered to the manager of the property to complete the requirement of service. On June first, the hearing was canceled and this item was continued to this hearing today. A continuance was issued and sent by regular mail and also emailed to the owner who was here today. She said that the Town had evidence to submit to the Special Magistrate and this evidence was also forwarded to the owner today to give Mr. MacLennan time to review.

The Special Magistrate swore Mr. MacLennan (in attendance via Zoom) in. Mr. MacLennan answered the Special Magistrate that they were not informed in April about the live music violation location. They were informed that the problem was the noise level and they complied with that. In fact, this band played for several months and they did not know it was against any ordinance. For the May 15th incident, Mr. MacLennan said that Inspector Banyas said she warned that they would have to start cracking down on him. Mr. MacLennan said they did have a band already booked and paid and after their set, they left around 8:30PM. The following day was when they were officially told that live music outside was prohibited. He did not know about the prohibition before that. In fact, live or amplified music seemed to be acceptable. They have canceled all the other bands and have not had anyone back since.

The Special Magistrate questioned Ms. Banyas about when she spoke with Mr. MacLennan on May 15, 2021 at approximately 4:45PM and compliance was not achieved until a few hours later when the musician departed. Inspector Banyas testified that she spoke to Mr. MacLennan about 4:45PM and gave him a copy of the code explaining what was not permissible. She believed that it was at that time that they talked about other owners before him having Special Event Permits. This was a permissible way to have live music. She said that she received notifications from BSO that they were still out playing and to her knowledge the music did not stop until around 7:30PM on that day. She had a photo of the band playing on the sidewalk on Saturday, May 15th, at approximately 4:15PM. She gave her photos to the Special Magistrate and answered the Special Magistrate that the pictures were sent to Mr. MacLennan. She also has an email from a BSO deputy describing music being played at 1900 hours. She explained what was shown in the photos. She spoke about the instruments and the set up being across a large portion of the sidewalk and also in the area owned by the Town and the area owned by the property owner. She further explained what was in the BSO report. She said that the original complaint was about the loudness but the code about the areas prohibited to having live or amplified music was also given to the owner the evening of the loudness violation.

The Special Magistrate accepted her evidence into the record as the Town's Composite Exhibit. Mr. MacLennan answered the Special Magistrate that since these incidents, there was no more music played outside. Ms. Banyas said that the Town was not requesting any fine or costs for this hearing, only a Finding of Fact that the violations existed and were complied and if they should come in front of the Special Magistrate again on this same property within five years under the same property owner, it could be deemed a repeat violator subject to more immediate and higher fines than for a typical violation. The first few violations spoken about today showed history but the last violation was when the notice was delivered and the requirement for service was completed. The Special Magistrate ordered a Finding of Fact that the violations occurred (at least on May 15 and May 21, 2021) and have come into compliance but if the violation(s) should come

in front of the Special Magistrate again for any type of music played outside on this same property within five years under the same property owner, it could be deemed a repeat violation subject to more immediate and higher fines than for a typical violation and there was no fine or costs assessed for today's hearing.

As there were no other participants present via Zoom, Ms. Ramirez called case #7.

ITEM #V.7

***TAKEN OUT OF SEQUENCE**

Case #: 21050003 – Noise Violations

Property Owner: Anglin Fam Tr & Raymond Anglin (owner) Mulligan's (sub-lessor)

Address/Folio: 14 E Commercial Blvd

Code Section(s): Chapter 3 – Alcoholic Beverages – Section 3-6(b)

For background information, Senior Code Inspector Banyas testified at the May Hearing that Anglin Family Trust was the property owner, the sub-lessor was Mulligan's, Fisherman's Pier was the original lessor, and the property they were discussing was adjacent to the pier. The violation was for music played (or any kind of entertainment) after 12 midnight until 9:00AM the following morning in a room serving alcoholic beverages, and in a non-soundproof room at a non-nightclub business. The code was to protect the peace and quiet of the neighborhood. There were four occasions with the same reoccurring violation and then since May 15, 2021, no further reoccurrences of the violation were observed and the Special Magistrate ordered a Finding of Fact at the May 27, 2021 Hearing that the noise violation occurred multiple times but was now in compliance and if this violation recurred within five years at the same property under the same ownership, it may be deemed a repeat violation subject to immediate and higher fines.

Attorney Alan Gabriel was virtually present via Zoom on behalf of the Town for this agenda item at both the May 27, 2021 Hearing and tonight's Hearing and left both times after this agenda item was heard. There was no one in attendance (either in person or via Zoom) to represent the owner, the lessor, or the sub-lessor at either the May Hearing or tonight's Hearing. Senior Code Inspector Banyas testified today that after the May Hearing, she found that a voice message was left by one of Mulligan's managers asking for a Zoom link. There was an error in the Town's notice that contained the old COVID guidelines stating that they would receive a Zoom link. As the May Hearing was in person, there was no Zoom link sent. Ms. Banyas called the manager back and apologized and advised her that it would be redone at this hearing. Ms. Banyas sent a new email with a new hearing notice and also mailed it out. The Special Magistrate asked Ms. Banyas if anyone responded that they received the new email and Ms. Banyas replied that no one emailed her and no one called her. She further stated that what she mailed out was not returned. Ms. Banyas answered the Special Magistrate that she was confident that at least one person who was responsible for the property and managing Mulligan's was truly informed about tonight. The Special Magistrate found that notice of tonight's hearing/service was sufficient. Ms. Banyas requested that the Special Magistrate reorder the same order that he made at the May 27, 2021 Hearing based upon the evidence that was presented at that time. He was informed that there was no fine or costs assessed with tonight's Hearing and no fines or costs assessed were assessed for May's Hearing. The Special Magistrate ordered a Finding of Fact at the May 27, 2021 Hearing that the noise violation occurred multiple times but was now in compliance and if this violation recurred within five years at the same property under the same ownership, it may be deemed a repeat violator subject to immediate and higher fines. Special Magistrate Ansbro's re-order today was as follows: The Special Magistrate ordered no fines or costs for today and a Finding of Fact that the noise violation occurred multiple times but was now in compliance and if this violation recurred within five years at the same property under the same ownership, it may be deemed a repeat violator subject to immediate and higher fines.

As there were no other participants present via Zoom, Ms. Ramirez called the cases for people who were present at Jarvis Hall.

ITEM #V.5

***TAKEN OUT OF SEQUENCE**

Case #: 19110001 – Building Code Violations
Property Owner: Polakoski, Joseph Polakoski, Magdala
Address/Folio: 4243 Bougainvilla Dr
Code Section(s): Chapter 6 – Building and Building Regulations Section 6-612(a)

Senior Code Inspector Banyas testified that at the November 14, 2019 Special Magistrate Hearing, the respondent requested a twelve-month construction timeline extension which the Special Magistrate granted. The new completion date would be December 26, 2020. The fine accrued beginning December 27, 2020 because the new completion date was not met. The fine was for thirty days at \$50/day, another thirty days at \$75/day, and then 26 days at \$100/day. This was a total of \$6,350 for the 86 days out of compliance. The respondents were here to request a mitigation/reduction of the fine. The Special Magistrate was answered by Inspector Banyas that there could not be a second extension, even if they wanted to request it. Fayelle testified that she lives at 4243 Bougainvilla Dr. When the construction was being done, she was the owner. Now it was her sister and brother-in-law. The construction was done and it would have been on time if it was not for COVID. This was out of their control and was asking the Special Magistrate that this amount of fine would be too hard for them to pay. She answered the Special Magistrate that the explanation given tonight was valid. She further answered the Special Magistrate that Costs for monitoring this by the Town would be around \$150. The Special Magistrate reduced the \$6,350 fine to \$150 payable within thirty days (by July 26, 2021). The Special Magistrate ordered reduction of the \$6,350 fine to \$150 payable within thirty days (by July 26, 2021).

As no one else was present, Ms. Ramirez would go back to the original order of the agenda and called case #2

NEW BUSINESS

ITEM #V.2

Case #: 21050001 – Building Code Violations
Property Owner: 827 NW 114 St LLC
Address/Folio: 230 Pine Ave
Code Section(s): Florida Building Code 6th Edition (2017) FBC BCA Section 105.1.
Permits. Required

For the record, no one was present to represent the property owner. Senior Code Inspector Banyas testified that there was a relatively new owner for this unoccupied single-family residence. The property was posted with a Stop Work Order on May 7, 2021 for work without a permit. On May 8th, a Notice of Violation was issued. The green card was in the file. She realized that the Notice was an old Notice with COVID instructions but now we have in person meetings so she posted at Town Hall and the property. She also mailed it to them certified mail. There was no contact with the owner or the agent but work has stopped. No permit application has been received. The Building Official suggested a Final Order giving thirty days to comply by obtaining an after-the-fact permit for all work done without a permit as there has not been any response to the new mailing and posting. They also have to finish the work, pass all inspections and final inspections and close the permit out by July 26, 2021 or a fine of \$200/day and \$50 Hearing Costs will be due immediately or payable by the next hearing. She submitted a photo to the Special Magistrate who entered it into evidence as Town Exhibit. The Special Magistrate ordered a Final

Order to obtain and completely close out an after-the-fact permit for all work done without a permit by July 26, 2021 or a fine of \$200/day plus \$50 Hearing Costs due immediately or payable by the next hearing.

Ms. Ramirez read into the record case #3 and case #4 as being continued to the July 22, 2021 Hearing.

OLD BUSINESS

ITEM #V.3

Case #: 20100010 – Building Code Violations
Property Owner: Sauvageau, Danielle
Address/Folio: 4518 Seagrape Dr
Code Section(s): Florida Building Code Section 105.1. Required

For the record, no one was present to represent the property owner. This case was continued to the July 22, 2021 hearing.

ITEM #V.4

Case #: 20110001 – Building Code Violations
Property Owner: Gatzonis, Aurora and John
Address/Folio: 4332 N Ocean Dr
Code Section(s): Florida Building Code Section 105.1. Required

For the record, no one was present to represent the property owners. This case was continued to the July 22, 2021 hearing.

Ms. Ramirez read into the record case #6 as being complied.

ITEM #V.6

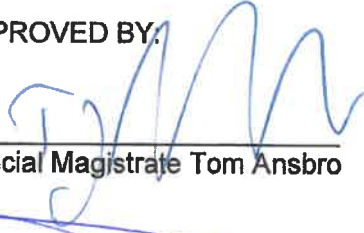
Case #: 20100007 – Building Code Violations
Property Owner: Nesch, Dorothea Grossman, David
Address/Folio: 1480 S Ocean Blvd
Code Section(s): Florida Building Code Section 105.1. Required

For the record, no one was present to represent the property owners. This case was complied.

VI. ADJOURNMENT

Not having any additional business to be heard, Special Magistrate Tom Ansbro adjourned the hearing on June 24, 2021 at approximately 5:47 PM.

APPROVED BY:


Special Magistrate Tom Ansbro

ATTEST:


Sydney Ramirez, Planning Technician/Special Magistrate Clerk
Town of Lauderdale-By-The-Sea, Florida