

MINUTES
CODE ENFORCEMENT SPECIAL MAGISTRATE MEETING
December 1, 2021
3000 Bellemead Drive Daytona Beach Shores, FL 32118

1. CALL TO ORDER

A. Opening Statement by Special Magistrate deLaroche

The Special Magistrate called the meeting to order at 9:00 am.

B. Swearing in Witnesses

Ms. Herstein was sworn in to provide testimony for the day's cases.

2. OPENING REMARKS

A. Indication of any items being removed from agenda

There were no cases removed from the agenda.

3. MINUTES

A. Code Enforcement Special Magistrate Minutes October 20, 2021

SM deLaroche approved the minutes from October 20, 2021.

4. ADVANCED HEARINGS (Post-Initial Hearings)

A. Property Owners: Ngoc-Hung N. Phan & Nhu-y T. Le
Property Address: 2416 S. Atlantic Avenue
Code Enforcement Case #: CDEF2021-03
Volusia County Parcel ID #: 5322-04-14-0180

Ms. Herstein requested that all the documents and slides be accepted into evidence. The Special Magistrate accepted the evidence with no objection. Ms. Herstein noted that this would be a First and Second Compliance Hearing. The Initial Hearing took place on April 21st and was given six months to gain compliance or a fine of \$250 per day would begin. There were 20 violations initially and all but 7 were compliant by the date ordered. The property gained full compliance on November 9, 2021, 18 days past the ordered date. Slides

were shown of all the violations. The Notice of First and Second Compliance Hearing was sent and good service was achieved. Staff requested Order 11 be issued with a reimbursement of additional Administrative Fees in the amount of \$149.09. The total Administrative Fees due is \$311.98. Either Order 12 or 13 would also need to be issued after the Special Magistrate has heard from the Respondent.

Property Owner Ngoc-Hung Phan was sworn in to provide testimony. He submitted medical documents that showed both he and his wife were in the hospital earlier this year. They had a difficult time finding a contractor to do the work and had to work around his timeline. He apologized that it took a bit longer but felt it was done correctly. He didn't want the work rushed just to gain compliance. The building received three coats of paint that took additional drying time in between each coat. That accounted for additional days past the ordered date. He had no issue with paying the Administration Fees due but requested the fine be waived. Special Magistrate deLaroache issued Order #11 stating that the property remained in violation. Special Magistrate deLaroache issued Order #13 with a reduction of \$1,000 in fines for the time it took to allow for the paint to dry. The remaining fine amount is \$3,500, with the fine payable within 90 days or the fine reverts to the full amount of \$4,500. He also ordered reimbursement of the Administrative Fee of \$149.09 payable within 60 days and the existing Administrative Fee of \$162.89 paid within seven days.

- B. Property Owner: Richard D. Merkel
Violation Address: 2944 Sea Oats Circle in Daytona Beach Shores, FL
Code Enforcement Case #: PCDEF2021-20
Volusia County Tax Parcel ID #: 5327-14-12-0640

Ms. Herstein requested that all the documents and slides be accepted into evidence. The Special Magistrate accepted the evidence with no objection. Ms. Herstein stated that she had spoken with the Respondent since the initial hearing, but the property was not compliant by the date ordered. There is no formal permit or application for the work that has already been done. The Notice of First Compliance Hearing was sent on November 15th and good service was achieved. The property was also posted on that date. The Respondent was not in attendance at the hearing.

Special Magistrate deLaroache issued Order #11 stating that the property remained in violation and the fine of \$200 per day would begin on October 20th. He ordered reimbursement of the Administrative Fee in the amount of \$85.53 payable within 60 days.

5. INITIAL HEARINGS

- A. Property Owner: SS 2500, LLC
Violation Address: 2504 S. Atlantic Ave. in Daytona Beach Shores, Florida
Code Enforcement Case #: CDEF2021-55
Volusia County Tax Parcel ID #: 5322-01-00-0266

Ms. Herstein requested that all the documents and slides be accepted into evidence. The Special Magistrate accepted the evidence with no objection. The property is a vacant mini-golf course with no current business at the site. It requires a Vacant Building Registration and a Certificate of Compliance - Vacant property. There are a few structures on the property and the Public Safety Department has been called out for vagrants. The property was initially inspected on August 5, 2021 and multiple violations were found. A Notice of Violation was posted on the property and sent by First Class Mail on October 6th. The

property was re-inspected on November 15th from the right-of-way and it was determined that the violations still existed. A Statement of Violation/Request for Hearing was posted on the property and sent by both Certified and First Class Mail. Good service was achieved. Ms. Herstein met Ms. Ivanhoe at the property on Nov. 16th along with Barry (her contractor). The violations were identified and reviewed by both of them. Ms. Herstein presented slides that depicted each violation on the property. Staff requested the Special Magistrate to issue Order #7 with two dates for compliance. The first date of January 3, 2022 would be for the following three items: 1) facilitate the Certificate of Compliance - Vacant Property inspection, 2) drain all existing water from the water features and implement a draining system 3) obtain an electrical permit for all electrical issues on the property. The second date for compliance is May 2, 2022, for all other remaining violations. Reimbursement of the Administrative Fee in the amount of \$162.81 was also requested.

The property owner, Janet Ivanhoe, was sworn in. She explained that she had recent knee replacement surgery and was still recovering. She hoped to use her contractor, Steve Thompson, to do the work but he was unavailable. She is working with FPL for better lighting on the property. Her current contractor is Barry and he is working to help secure the property. She also stated that she is working on a sale of the property. The timelines were acceptable to her and she did not dispute the testimony or evidence.

Special Magistrate deLaroche issued Order #7 with a date of January 3, 2022, to complete the following: 1) facilitate the inspection for vacant property certification, 2) drain all existing water from the water features and implement a draining system 3) obtain an electrical permit for all electrical issues on the property. The remaining violations need to be compliant by the date of May 2, 2022, including obtaining approved final inspections on all required permits. Reimbursement of the Administrative Fee in the amount of \$162.81 is due within 60 days.

- B. Property Owners: David Campbell & Marjorie Yappow
Violation Address: 3226 S. Atlantic Ave. in Daytona Beach Shores, Florida
Code Enforcement Case #: CDEF2021-30
Volusia County Tax Parcel ID #: 5335-01-06-0010

Respondent David Campbell and his Attorney Eric Latinsky were in attendance for the hearing. Attorney Latinsky asked to file a Motion to Dismiss. The city had Attorney Garrett Olsen from the Vose Law firm in attendance. The Special Magistrate took a ten-minute break to read the motion. Attorney Latinsky stated that he was not familiar with the proceedings. He thought if the property was brought into compliance, the case would be dismissed. SM deLaroche stated that he would create a method to receive any motions prior to the days' hearings. Attorney Latinsky felt there were discrepancies between the City's Code of Ordinances and the FL Statutes. Attorney Olsen stated that the city agrees that the property is now compliant. He also stated that city ordinances are in control when things conflict with Chap 162 of the FS., but Chapter 162 is currently acting as a supplement because there is no conflict. The city has a known procedure in place. Attorney Latinsky disagreed and stated that we should only proceed under Section 2-26 of the City's Code. Special Magistrate deLaroche stated that the original hearing was sent Notice of Hearing on August 31st and that hearing had been continued. The Respondent was given 30 days to comply and had not done so by the date specified. There was no evidence presented to show compliance achieved before the Notice of Hearing was sent out. Due to the two continuances granted, the property was able to come into compliance. The SM declined to address any conflict between the city's code and the Florida Statutes. He stated it was not necessary because the Respondent's argument was not factually correct, considering the facts stated in the

Notice of Hearing dated August 31, 2021. The Motion to Dismiss was denied. Ms. Herstein stated that on Monday, November 29, 2021, the property became compliant. The city requested reimbursement of the Administrative Fee in the amount of \$155.99. Attorney Latinsky requested 90 days to pay the fee. SM deLaroche requested the clerk to note that the Respondent specifically retained the right to appeal his decision on the Motion to Dismiss. Order #4 was issued with the Administrative Fee of \$155.99 payable within 90 days.

6. CLOSING REMARKS

- A. The next Code Enforcement Special Magistrate Meeting is scheduled for Wednesday, January 19, 2022, at 9:00 a.m.
- B. The February meeting is scheduled for Wednesday, February 16, 2022, at 9:00 a.m.
- C. The March meeting is scheduled for Wednesday, March 16, 2022, at 9:00 a.m.

7. SPECIAL MAGISTRATE COMMENTS

8. ADJOURNMENT

The meeting ended at 11:06 am.

Special Magistrate, Steven deLaroche

Recording Secretary, Cheri Schwab