



# The CITY OF DAYTONA BEACH SPECIAL MAGISTRATE MEETING MINUTES

City Hall  
Commission Chambers  
Special Meeting

301 South Ridgewood Avenue  
Tuesday, October 9, 2018  
9:00 AM

Pursuant to Section 286.0105, Florida Statutes, if any person decides to appeal any decision made by this Board at this public meeting, such person will need a record of the proceedings and, for that purpose, such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City does not prepare or provide such a record.

	For special accommodations, please notify the City Clerk's Office at least 72 hours in advance. (386) 671-8020		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the City Clerk's Office.
---	--	---	--

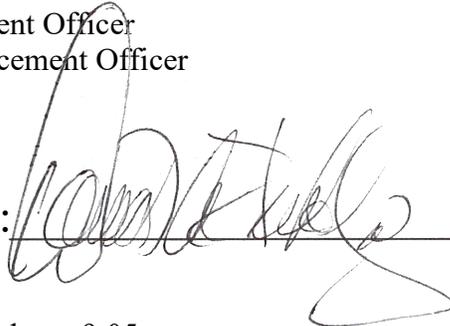
## ATTENDEES:

Mr. David A. Vukelja, Special Magistrate

## STAFF:

Anthony E. Jackson, Assistant City Attorney  
Capt. Scott Lee, Daytona Beach PD  
Mr. Denzil Sykes, Code Enforcement Manager  
Officer Steve Jessmer  
John C. Stenson, Lead Code Enforcement Officer  
Michael Fitzgerald, Code Enforcement Officer  
Clifford Recanzone, III, Code Enforcement Officer  
Aimee Hampton, Sr. Paralegal  
Vivian June Barnes, Secretary

Approval of Minutes by: \_\_\_\_\_  
Special Magistrate



Mr. Vukelja called the Hearing to order at 9:05 a.m.

Ms. Barnes swore in members of the City Staff.

There were no announcements from the Secretary.

## CASE 1: Beach Photo & Video – 604 Main Street - Requested by Mark Robertson.

Appeal of denial of Bike Week Executive Committee and City Commission for participation in Master Plan outside activities for Biketoberfest 2018.

Mr. Mark Robertson came forward and was sworn in.

Mr. Jackson stated that the Respondent was appealing denial of participation in the Master Plan for Biketoberfest. The Commission issued a report that Beach Photo was in noncompliance on several violations but have since come into compliance. He stated that the two principle violations that have caused them to be in violation are 1) not being open enough days through the year and 2) having a finding of noncompliance. He stated the issue of noncompliance had been resolved but the issue remains of being open more than 250 days in the calendar year. He further stated that the Inspector had begun viewing this situation in late June and they had been open 115 days through September. He stated there are additional reports that they had not been

open throughout the year therefore it does not meet the requirements of being open 250 days as required by Section 9 of the Master Plan and it is the City's recommendation that the Appeal be denied.

Michael Fitzgerald, City of Daytona Beach Code Enforcement officer explained the violations against the business and stated they were formally noticed and came into compliance within 7 days.

Mr. Jackson called Inspector Steve Alderman who testified that he performed daily inspections on the business starting in early June 2018, and for 4 days a week, he checked every day to see if the business was open. He also checked the doors which were not open, and the situation never changed. He stated this was a parking lot that he uses on a regular basis and the business did have an open sign on the door, but it has never been opened.

Mr. Vukelja asked if Mr. Alderman had any contact with Mr. Robertson to ask why his business is not open and Mr. Alderman stated he had not had any contact.

Mr. Jackson called Officer Steven Jessmer. Officer Jessmer stated he had also done some business checks and found that the business was not open or operating and that he could see magazines inside the front window and produced pictures of mail that had been dropped through the mail slot dated June 5. He stated he took the pictures on July 20.

Mr. Robertson testified that he had always worked with Code Enforcement and stated he received no correspondence regarding his denial and heard of the denial through a neighboring business owner. He stated they are an open and running business and have been operating on Main Street for almost 100 years. He stated they are a photographic business and he often leaves the business to go and shoot photos for his clients. He stated they also have an internet business that operates 24/7, 365 days a year. He stated he pays for phone services, repairs, alarm, spectrum, water, electric, accounting, ADT alarm system, taxes and they are an up and running business. He stated there was a number on the door that is answered at all times, but his business had changed to be more service oriented.

Mr. Vukelja asked what Mr. Robertson believed was the reason for the decision to require participants to be open 250 days a year. Mr. Robertson stated that he thought it was because of the itinerant merchants that come in. Mr. Vukelja stated that he always thought the rationale was to reward businesses that withstand all year being open on Main Street and made their presence known year around.

Mr. Robertson stated that they do have future plans and investors who want to do something with the building. He stated that Beach Photo has participated in these activities since the early 80's. Mr. Robertson stated that these requirements were only put into effect about 6 or 7 years ago. He stated that if he had some warning or correspondence, he could have pulled his ADT records of when his door was open, and he could have produced records of sales.

### Ruling

Mr. Vukelja ruled that he did not find the gravity of the noncompliance warranted denial of participation in the Biketoberfest Master Plan however, he was persuaded by the testimony of the Inspector and Officer that this business was not open for the required number of days and denied the Appeal.

## CASE 2: Ocean Club - 511 Main Street Requested by Pinny Mamane

Appeal of denial of Bike Week Executive Committee and City Commission for participation in Master Plan outside activities for Biketoberfest 2018.

Mr. Pinchas Mamane was called forward and sworn in.

Mr. Jackson stated this case was also before the Special Magistrate for Appeal for the denial of participation in the Master Plan for Biketoberfest 2018. He stated there are two issues for the denial which are noncompliance and not being open a sufficient number of days. He stated this

case also included complaints from neighboring businesses that while it says open on the outside has nothing that allows it to truly operate as a year-round business. He stated that the machines that are on the inside are broken and there is no washing inside and that it does not meet the requirements.

Mr. Jackson called Inspector Michael Fitzgerald who will testify regarding the condition of the business and how long that has lasted. He stated the City's believes it has lasted over 115 days and the business would have been open less than the 250 days required. Inspector Fitzgerald testified that he had inspected the business and produced photos showing the code violations on the property. He also showed photos of the corrected violations. When the inspection was performed on July 19, Inspector Fitzgerald stated that the door was locked. Inspector Fitzgerald stated that the merchant across the street told him that the business had been closed and when he was able to enter the Ocean Club, on multiple occasions, none of the machines were working. Inspector Fitzgerald stated that Mr. Mamane was in the process of having the interior renovated and that over the last month the business had been open more and more.

Mr. Vukelja asked the Inspector if he had been to the business multiple times since July 19 and Inspector Fitzgerald stated that he had and that on several trips to the business, the contractor was making repairs.

Mr. Vukelja asked the Inspector if the violations were Noticed. Inspector Fitzgerald stated that they were, and that the property came into compliance on October 11, 2018.

Mr. Vukelja asked the Inspector if he had observed old machines going out and new machines being brought in. Inspector Fitzgerald stated there were about 6 new washers and he was told that dryers were coming in.

Mr. Vukelja stated that the Inspector has testified to 3 occasions, July 19, August 10 and September 12 and asked if it appeared that things were transitioning on all occasions. Inspector Fitzgerald stated yes that a contractor was performing the work.

Mr. Jackson called Steve Alderman who testified that he checked the door on this business daily and up until 3 weeks ago, the door was closed and locked all the time. He stated they had a Grand Opening and he met 2 of the girls that were working there and then all of a sudden week before last, it was closed.

Mr. Vukelja asked if 250 days ago were, they open for business. Inspector Alderman stated that was before he was assigned the task of checking.

Mr. Vukelja asked if he saw remodeling being done and machines being switched out on previous occasions in which Inspector Alderman had visited the business. Inspector Alderman stated that he did.

Mr. Vukelja stated that the exterior looked relatively new and Inspector Alderman stated that it had improved a lot but that those violations were there for a very long time prior to the Notice of Violation.

Mr. Vukelja asked Inspector Alderman to confirm that 3 weeks ago they were open and previous to that they were closed and asked how far back the Inspector believes the business was closed. Inspector Alderman stated June and that yesterday was his last inspection.

Mr. Jackson stated that he had calculated the inspections and that from June 1 to September 24 there were 116 days in which the business was not open which is less than the required 250 days.

Mr. Vukelja asked if the City had permits for the work that was being done. Inspector Fitzgerald stated that the work done did not require permits.

Mr. Jackson called Officer Jessmer who testified that he also spoke to the business owner across the street and was told that the business was not open on a consistent basis for at least 2 or 3 months.

Mr. Mamane stated that they had tried to open the business as a coin operated business and had a lot of vandalism and people breaking into the machines. He changed the business model and brought in 2 girls to offer full service. He stated that they have other outlets in different parts of town, and they sell excess merchandise in those locations. He stated they had been closed for 2 months, from mid-July to September to replace the old machines and deal with the violations on the building.

Mr. Vukelja asked if 250 days goes back to this time last year. Mr. Jackson stated that it goes back to before participation in the last event in October.

Mr. Vukelja asked Mr. Mamane if it was his sworn testimony that he was open for business from October 2017, 5 days a week to at least June or July when he began to do construction work, remodeling or repairs. Mr. Mamane stated yes except for Sabbath holidays.

Mr. Vukelja asked Mr. Jackson if a business on Main Street is disqualified for being closed if they are in the process of remodeling. Mr. Jackson stated that it depended on the actions they were taking once the job was complete and the Inspections reveal that they were closed before the work began.

Mr. Vukelja stated he sensed that Mr. Mamane had gone beyond what the violations required him to do and Inspector Fitzgerald stated that he had.

Mr. Jackson stated that there was notification given in May for the violations but that this was not a repeat offender.

Officer Jessmer stated Code Enforcement Manager, Denzil Sykes, was trying to locate a memo from May or June that stated that this property should not be allowed to participate in the Master Plan.

Captain Scott Lee was sworn in and testified that the email was between the Cultural Services Department and Code Enforcement Department in reference to the Master Plan process. He stated there was some concern about the businesses being allowed to participate because of the condition of the property. He stated Code Enforcement Manager, Denzil Sykes, went out and made inspections on the property and responded that this property not be allowed to participate based on issues and things that needed to be fixed and that there was no operating business at the time. This was toward the tail end of May and before July. Captain Lee stated he did not know if Mr. Sykes spoke to the property owner or not.

Code Enforcement Manager, Denzil Sykes, testified that he was a party to a communication regarding the status of this property in May and whether it should be allowed to participate in the Master Plan. He stated that it was an inspection requested through Cultural Services and that he inspected the property and took Zoning Officer Rose Askew with him. He stated that the door was open, and the older machines were there but they were inoperable and there was no attendant. He stated 2 of the machines had stagnant water in them and the dryers were either taped over the coin slots or broken and unplugged. He stated they were supposed to have retail sales there but there were only 3 shirts laying in a corner on a stick. He stated the dispenser for the soap and the softeners were rusted and inoperable. He stated that he spoke to one of the nearby business owners who said the condition had been that way for a while. He stated the facilities were unusable. Code Enforcement Manager Sykes stated he had visited on numerous occasions and that several times it was locked and other times the door was open, but you could not use the facilities.

Mr. Mamane stated that he has been in business over 30 years and owned several businesses on Main Street, he has signed Trespass orders on the site and that he has done everything he can do to prevent break ins which is how it got to this condition.

### Ruling

Mr. Vukelja denied the request for participation in the 2018 Biketoberfest Master Plan.

## CASE 3: Tombstone Silverworks -405 Main Street Requested by Tom Scianablo

Appeal of denial of Bike Week Executive Committee and City Commission for participation in Master Plan outside activities for Biketoberfest 2018.

Mr. Thomas Scianablo came forward and was sworn in.

Mr. Scianablo stated that he had not been open for 250 days.

Mr. Jackson stated the case was before the Special Magistrate for Appeal of denial for participation in 2018 Bike Week Master Plan activities. The circumstances in this situation is clearer as to the number of days open. He stated that the position of the business is that they are doing an internet business upstairs, the business is closed, there are no lights, there are no answering of certified mail the historical records say that they have not been open.

Code Inspector Clifford Recanzone testified that he went to the business on July 19 and the business appeared to be closed. He stated he sent a certified mail which was returned to him. He stated he posted the property on August 22 and received a call from the property owner on August 24 and the property was put back into compliance on September 18. Inspector Recanzone stated that there were 3 things that needed to be repaired, repainting of wooden planks on the side of the building where posters were being held and walls and remove the awnings.

Mr. Vukelja asked if the property was Noticed and Inspector Recanzone said yes, the property was posted on August 22.

Mr. Jackson stated in addition to the code violations, the number of days open was inspected by Inspector Steve Alderman. Inspector Alderman testified that he had inspected the door since June and that a couple of weeks ago Mr. Scianablo was coming out of the building and locking the door. He stated that Mr. Scianablo informed him that he was doing an EBAY business upstairs. Mr. Scianablo also told him that he kept the door locked based on the clientele on Main Street.

Mr. Vukelja asked Inspector Alderman how many times that he had checked the door and found it to be locked. Inspector Alderman stated he averaged once a week, at random times, physically checking the door but he stopped in front of it every day Monday through Thursday starting June 1 until yesterday. Inspector Alderman stated that he could see no other employees in the building.

Officer Steve Jessmer testified that he made several trips to the business as well and that there was nothing in the business to sell, there was no open sign and the door was locked.

Mr. Scianablo stated that the building was sold in May. He stated that his attorney, Jeffrey Sweet, wrote the contract for the building and the one acre so he gutted the building, destroyed the jewelry cabinets, disposed of the garbage and packed up the upstairs. He stated he had been there for 30 years and his business was always mail order/internet and he did not get very many people from the Main Street showroom except for Bike Week and Biketoberfest. He stated the sale fell apart after 4 months to a chicken restaurant and the plans were to build a new building and knock down Tombstone. He stated the building is packed up and he will never be open again. He stated he pays \$40,000.00 in property taxes and the money he gets for the outside one acre helps to pay his property taxes. Mr. Scianablo stated that he disconnected his open sign at the time of the contract.

### Ruling

Mr. Vukelja denied the request for participation in the 2018 Biketoberfest Master Plan.

## ADJOURNMENT