



**CITY OF SOUTH DAYTONA
SPECIAL MASTER CODE ENFORCEMENT
Minutes**

July 11, 2024 at 9:00 AM
CITY COUNCIL CHAMBERS
1672 S. Ridgewood Avenue, South Daytona, Florida

SPECIAL MASTER: Attorney Matthew Branz, Esquire

STAFF: Josh McEnany, Economic Development Director, Robert Kuhn, Code Compliance Officer, Ben Elkinton, Code Compliance Officer, and Becky Witte, Deputy City Clerk.

CALL TO ORDER: Special Master Matthew Branz called the City of South Daytona's Special Master Code Enforcement Hearing to Order at South Daytona's City Hall, City Council Chambers, 1672 S. Ridgewood Ave, South Daytona, Florida at 9:00 am.

PLEDGE OF ALLEGIANCE.

Special Master Branz welcomed those in attendance to the City of South Daytona Code Enforcement Special Master hearing. He said that today's proceedings are quasi-judicial in nature. Formal rules of evidence do not apply, but fundamental due process will be observed and govern all proceedings, he explained. Mr. Branz said that all testimony is under oath and will be recorded. There is no "public comment" portion of these proceedings, and all participants must have an active role in the case such as staff, respondent, and/or a witness, he said.

Special Master Branz continued to explain that at the conclusion of each hearing, he shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with the powers granted to the Code Enforcement Special Master. The order may include a notice that it must be complied with by a specified date, and that a fine may be imposed, he said.

Special Master Branz advised that if any party decides to appeal any decision made at this meeting, they will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based, per section 286.0105, Florida Statutes.

OATHS OF THE CITY OFFICIAL, RESPONDENTS AND WITNESSES: Executed by Deputy City Clerk, Becky Witte

APPROVAL OF MINUTES FOR: June 6, 2024 Special Master Hearing. Special Master Branz approved the minutes with minor modifications.

NEW BUSINESS:

Case: 24-000168 **Owner:** Grand 2311 LLC

Address: 644 Northern Road, South Daytona FL 32119

Parcel Number: 532913190011

VIOLATION(S):

1. City of South Daytona Code of Ordinances 16-19(13)(b), Rental dwellings Inspection required.
2. City of South Daytona Code of Ordinances 16-19(13)(a), Rental dwellings BTR required

Status: Non-compliance

Findings of Fact, Conclusions of Law and Order

Matt Miavez, Code Compliance Officer, presented the case and requested the property be found in violation.

Respondent, Stacia Blecky, property manager for Grand 2311 LLC, 644 Northern Road, South Daytona provided testimony.

Special Master Branz found based on the case and testimony presented that the property is found in violation of:

1. City of South Daytona Code of Ordinances Section 16-19 (13) Rental dwellings.
a. Local business tax receipt required: It shall be unlawful for any owner of residential property to rent or lease, or offer to rent or lease (throughout this subsection (13) the terms "rent" and "lease" are synonymous; as are the terms "to rent or lease" and "to offer to rent or lease") therein any dwelling or dwelling unit(s), whether single-family, duplex, triplex, multi-family, apartment, condominium, or more than one (1) room, etc., unless a current local business tax receipt therefore has been issued by the city, a copy of which is to be available at the structure in which the dwelling unit(s) is located. There is no requirement for there to be a written lease or any evidence on monetary payment to establish a rental arrangement. A rental arrangement shall be presumed to exist when someone is residing in a residential structure who is not the owner of the property and someone with an ownership interest is also not residing in said structure at the same time.

2. City of South Daytona Code of Ordinances Section 16-19 (13) Rental dwellings.
b. *Annual inspection required:* Each dwelling unit licensed [permitted] for rental must pass an annual inspection by a city code inspector(s). The singular for the term "code inspector" or "inspector" includes the plural for purposes of this subsection (13), and the term is gender neutral. The purpose of the annual inspection shall be to determine compliance with the International Property Maintenance Code, other applicable codes, and the supplemental provisions of this subsection (13). Annual inspection of such properties shall be accomplished in a systematic manner according to administratively determined plans and schedules.

Special Master Branz ordered that the Respondent correct the violation on or before July 26, 2024 at 4:00pm. If the Respondent fails to comply with this Order, a fine of \$100.00 per day will be imposed for each day the violation continues past the date as prescribed plus a fine of \$125.00 for administrative costs.

A hearing to impose fine will be scheduled for August 8, 2024.

OLD BUSINESS:

Case: 24-000045 **Owner:** VERSO SUB III LLC

Address: 2739 S. Ridgewood Avenue, South Daytona FL 32119

Parcel Number: 533306000010

VIOLATION(S):

1. International Property Maintenance Code 302.4, Weeds

Comments: Premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, , excluding trees or shrubs (but including invasive trees or shrubs) provided; however, this term shall not include cultivated flowers and gardens

2. Land Development Code 5.6(e)(5)(a), Fence Condition

Comments: All fences shall be maintained in their original upright condition.

Status: Non-compliance

Findings of Fact, Conclusions of Law and Order

Rob Kuhn, Code Compliance Officer, said this case came on for public hearing on May 9, 2024, pursuant to the Special Master's Order, titled Findings of Facts, Conclusion of Law and Order, dated May 9, 2024, where the property was found in violation.

On June 6, 2024, Special Master Branz signed an order imposing a fine of \$100.00 per day for violations. These fines shall begin May 25, 2024 and continue to accrue against the property until said property is brought into compliance. There will also be an administrative fine of \$125.00 imposed.

Respondent was not in attendance.

Special Master Branz found based on the testimony presented that the property was in compliance by June 19, 2022024 for following:

1. City of South Daytona, Code of Ordinances, Article IX. Housing, Section 5-189, Adopting the International Property Maintenance Code. International Property Maintenance Code Section 302.4: Premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.
2. City of South Daytona Land Development Regulations Section 5.6(E)(5)(a). Design and maintenance. All fences shall be maintained in their original upright condition.

Special Master said the Respondent is declared to be in compliance and that pending violation proceedings before the Special Master are concluded.

A fine of \$2,725 is due for 26 days of non-compliance at \$100 per day and a \$125 Administrative Fee.

Case: 24-000046 **Owner:** VERSO SUB III LLC

Address: 2737 S. Ridgewood Avenue, South Daytona FL 32119

Parcel Number: 533306000012

VIOLATION(S):

1. International Property Maintenance Code 302.4, Weeds

Comments: Premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, , excluding trees or shrubs (but including invasive trees or shrubs) provided; however, this term shall not include cultivated flowers and gardens

2. Land Development Code 5.6(e)(5)(a), Fence Condition

Comments: All fences shall be maintained in their original upright condition.

Status: Non-compliance

Findings of Fact, Conclusions of Law and Order

Rob Kuhn, Code Compliance Officer, said this case came on for public hearing on May 9, 2024, pursuant to the Special Master's Order, titled Findings of Facts, Conclusion of Law and Order, dated May 9, 2024, where the property was found in violation.

On June 6, 2024, Special Master Branz signed an order imposing a fine of \$100.00 per day for violations. These fines shall begin May 25, 2024 and continue to accrue against the property until said property is brought into compliance. There will also be an administrative fine of \$125.00 imposed.

Respondent was not in attendance.

Special Master Branz found based on the testimony presented that the property was in compliance by June 19, 2024 for following:

1. City of South Daytona, Code of Ordinances, Article IX. Housing, Section 5-189, Adopting the International Property Maintenance Code. International Property Maintenance Code Section 302.4: Premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.
2. City of South Daytona Land Development Regulations Section 5.6(E)(5)(a). Design and maintenance. All fences shall be maintained in their original upright condition.

Special Master said the Respondent is declared to be in compliance and that pending violation proceedings before the Special Master are concluded.

A fine of \$2,725 is due for 26 days of non-compliance at \$100 per day including a \$125 Administrative Fee.

Item 7: Fine Reduction Hearing

Case: 18-001447 **Owner:** Shoebox Saloon LLC

Address: 1903 S. Ridgewood Avenue, South Daytona FL 32119

Parcel Number: 534416000412

Status: Request Reduction of Fine

Respondent Adam Winterstien, 1903 S. Ridgewood Avenue, South Daytona, presented his request for a fine reduction.

Josh McEnany, Economic Development Director, presented the following:

1. Respondent owns and operates a bar at the property located at 1903 S Ridgewood Ave, South Daytona, Florida, parcel number: 534416000412 (the "Subject Property").
2. Respondent received adequate notice of the hearing.
3. A daily fine of \$250.00 was assessed against the Petitioner on October 14, 2018, which constituted a lien against the Subject Property, beginning on October 22, 2018.
4. The Subject Property came into compliance on February 5, 2020.
5. An Amended Order was entered finding the Subject Property remained out of compliance for 479 days, resulting in a total fine of \$119,750.00.
6. On December 12th, 2019, the Special Master entered a second Amended Order establishing a "capped" fine of \$89,109.00, which includes recording fees.
7. Respondent previously requested a reduction of the fine associated with the Subject Property which was granted on March 12, 2020. The fine was reduced from \$89,109.00 to \$10,040.00 on the condition that if the reduced fine amount was not paid in full by April 13, 2020, the fine would revert to the full amount of \$89,109.00.
8. The fine reverted back to \$89,109.00 on April 14, 2020, upon non-payment.
9. Costs Incurred by the City. Josh McEnany, Economic Development Director for the City, testified that the City has incurred \$31,085.00 in costs from the beginning of this action.
10. Responsiveness and Cooperation of Respondent. The evidence demonstrates that the Respondent was consistently unresponsive and uncooperative with city staff. The evidence demonstrates that the Respondent has been confrontational with city inspectors and staff, often resorting to threats – some of which required police intervention. The evidence further demonstrates that whenever city officials visit the Subject Property regarding an active code violation, the Respondent would immediately thwart the City's efforts to achieve compliance.
11. Prior Code Enforcement Actions. The Respondent frequently violates city codes at the Subject Property, prompting city staff to constantly issue courtesy notices to encourage compliance. Previous violations have included: illegal gambling machines (Case # 22-000282, 22-000217, 22-000001, 21-000346, 21-000026, 20-000352, 20-000220, 20-000178, 19-000397, 19-000397, 18-002429, 18-0001590), high grass/weeds, yard debris, parking issues, illegal signage, illegal lighting, vehicles without tags, and derogatory flags.
12. Other Evidence/Factors Considered. The operative Code Enforcement Order in this case was recorded in the Official Records for Volusia County, Florida. Thus, the \$89,109.00 fine associated with the Order on the Subject Property is a lien on the Subject Property and is an asset of the City. While compliance is the primary goal of the City's code enforcement efforts, reducing a fine

associated with a lien may remove the City's ability to pursue further enforcement efforts against commercial entities in the City of South Daytona that habitually violate City's codes.

Per Section 2-303(b)(4), South Daytona Code of Ordinances, the Special Master considered all factors considered the following relevant information in making a determination for reduction of fine:

1) the costs incurred by the city in investigating and prosecuting the code violation, including staff time, recording costs and attorney's fees; 2) the responsiveness and cooperation of the property owner in correcting the violation and mitigating reasons for any lack of cooperation such as age, physical disabilities or financial limitations; and 3) any prior code enforcement actions by the city against the same owner or an entity directly or indirectly under the control of the same person.

Special Master Branz said under Florida Case Law and the Ordinance, he does not have jurisdiction to reduce this as it is no longer a fine but is now a lien owned by the City. He continued to explain that Section 2-303, paragraph 5, states the release of the lien is under the authority of the City Manager. He concluded that he did not have the jurisdiction to make a determination on this case.

NEXT MEETING: August 8, 2024

ADJOURNMENT. Hearing adjourned at 9:38 am.

Respectfully submitted,



Becky Witte, Deputy City Clerk