

SPECIAL MASTER HEARING
City Commission Meeting Room
Special Master Karen Zann, Presiding
March 4, 2004
9:00 A.M. – 10:45 - 1:00 P.M. - 3:45 P.M.

Staff Present:

Eve Bazer, Administrative Assistant
Assistant City Attorney
Jennifer Chenault, Secretary
Leonard Ackley, Community Inspections Officer
Alberto Benavides, Community Inspections Officer
Lin Bradley, Community Code Supervisor
Peggy Burks, Community Inspections Officer
Thomas Clements, Fire Inspector
Andre Cross, Community Inspections Officer
Mike Donovan, Community Inspections Officer
Burt Fletcher, Community Inspections Officer
John Gossman, Community Inspections Officer
Deborah Haskins, Community Inspections Officer
John Hudak, Community Inspections Officer
Lee Kaplan, Community Inspections Officer
Karl Lauridsen, Community Landscape Officer
Gilbert Lopez, Community Inspections Officer
Dan Mullarkey, Community Inspections Officer
Todd Nobles, Community Inspections Officer
Cheryl Pingitore, Community Inspections Officer
Waynette Smith, Occupational License Inspector
Frank Stockinger, Community Inspections Officer
Ursula Thime, Community Inspections Officer
Kenneth Tyson, Community Inspections Officer

Also Present:

Thomas Ansbro, CE03040372
Arthur Head, CE03111183
Henry Johnson, CE04011954
Donna Johnson, CE04011954
Manuela Buedle, 815 Middle River Drive
James Kautz, CE03102430
Keith Poliakoff, CE03061918
Richard Potter, CE04011948
Ari Glazer, CE04020799
Richard Elbaz, CE04020329

Paal Sorensen, CE04020329
Michael Chapnik, CE03092149
Ed Toomey, CE03110574
Sam Coffey, CE03110574

NOTE: All individuals who presented information to the Special Master during these proceedings affirmed they would speak only the truth.

The meeting was called to order at 9:00 A.M. Ms. Zann introduced herself and explained her role in ensuring adherence with the City's codes. She also pointed out that the proceedings were being recorded.

Reference CE03061918

Galt Ocean Plaza 613 LLC
3300 Northeast 34th Street

Request for Abatement

Mr. Keith Poliakoff, attorney for the owner, informed Ms. Zann that his client had bought this property and not been aware of the code violations. As soon as realized there were violations, his client had taken care of the problems. Unfortunately, the plans for the after-the-fact permit had sat with the City and not been acted upon for an extremely long time – past the ordered compliance date. At the December 4, 2003 meeting, the case had been listed as a Massey hearing and Mr. Poliakoff had informed the Special Master that he had previously filed a notice of continuance since his client could not meet the deadline. Special Master Conner had stopped the fines at \$4,400.00 and granted a 60-day extension so Inspector Stockinger could reinspect the property.

Mr. Frank Stockinger, Community Inspections Officer, testified that this was all true; the City treated all after-the-fact permits as a low priority. He agreed that Mr. Poliakoff's client did what was necessary as soon as they were aware of the violations and felt the title company had erred in not discovering the violations. Mr. Poliakoff asked that his client not be penalized for the mistake of the title company.

Ms. Zann abated the fines.

Reference CE03102430

Evangel Church
1045 Northwest 1st Avenue

Request for Extension

Mr. James Kautz, the church Pastor, stated that they had completed the sod and the painting and had to complete repairs on the driveway. He felt this would take another 60 days. He had discussed this with Inspector Haskins, who had no objection to the extension.

Ms. Deborah Haskins, Community Inspections Officer, testified that the City had no objection to the extension.

Ms. Zann granted a 60-day extension.

Reference CE04011948

Re/Max Alliance
5000 Northeast 28th Avenue
Continued from February 5, 2004

Mr. Karl Lauridsen, Community Landscape Officer, testified that the respondent had not installed equivalent replacement for tree removal. He recommended 20 days to comply or a fine of \$ 50.00 per day. He presented documentation compiled by David Gennero.

Mr. Richard Potter, attorney for the respondent, stated that he wished to have this heard before Judge Futch as he had appeared before him the previous month. There was discussion concerning the length of time needed to cover the case and the City agreed to continue the case until Judge Futch returned on April 1, 2004. Mr. Potter requested a copy of the paperwork presented by Mr. Lauridsen.

Ms. Zann granted a continuance to April 1, 2004.

Reference CE04020329

Paul & David Sorensen Revocable Trust
3301 North Ocean Boulevard
Sec. 47-19.9: Improper displays;
Sec. 47-34.1 A.1: Permitted uses:
unpermitted displays and storage

Ms. Bazer announced that certified mail had been accepted on February 19, 2004.

Mr. Frank Stockinger, Community Inspections Officer, testified that there was statuary displayed outside the walls of the building, on the sidewalk and at the rear of the property. He recommended 60 days to comply or a fine of \$25.00 per day, per violation. He presented photographs of the property to Ms. Zann.

Mr. Richard Elbaz, tenant, explained that he had always kept the statuary outside, using it as a sales tool. He acknowledged that it may be a bit excessive and asked that he be allowed to keep a couple of pieces on display while he obtained a permit.

Ms. Zann found in favor of the City and ordered compliance within 60 days or a fine of \$25.00 per day, per violation would be imposed.

Reference CE04011954

Henry Johnson
Sec. 9-281(b): Unlicensed, inoperable vehicles

Mr. Frank Stockinger, Community Inspections Officer, stated that the City had no objection to allowing an additional 60 days to comply.

Ms. Zann granted a 60-day extension.

Reference CE03092149

Middle River Villas Condo Association
815 Middle River Drive

Sec. 47-20.20 H: Parking area in disrepair

Ms. Bazer announced that certified mail had been accepted on February 18, 2004.

Ms. Ursula Thime, Community Inspections Officer, testified that the asphalt parking lot was deteriorated with potholes; stripes were faded and wheel stops were loose or missing. She recommended 90 days to comply or a fine of \$100.00 per day. She presented photographs of the property to Ms. Zann. The building owner had asked if the City would vacate the swale so the area could be used for parking and the City had refused. Ms. Thime recommended 90 days to comply or a fine of \$100.00 per day.

Mr. Michael Chapnik, attorney for the condo association, explained that the association had been using the swale area for parking and hoped to pave it and utilize it permanently. The owners were attempting to resubmit the request to the City and he asked for an indefinite extension until this was sorted out.

The City Attorney stated that the owner's request had been denied and in the meantime the City wanted the damaged parking area repaired; the swale area could be resurfaced as well if the proper permits were obtained. She agreed with Ms. Thime's recommendation.

One of the homeowners testified that the City had never paved the swale; the condo association had always done it. She asked if parking would still be permitted on the swale until repairs were made. The City Attorney stated that parking was allowed on the swale; the issue today was the condition of the condo association's parking lot.

Ms. Zann found in favor of the City and ordered compliance within 90 days or a fine of \$100.00 per day would be imposed.

Reference CE03111183

Arthur & Kimberly Head
1315 Southwest 30th Street

Sec. 9-306: House and fascia missing paint;
Sec. 9-313(a): Required display of address

Ms. Bazer announced that certified mail had been accepted on February 26, 2004.

Mr. Todd Nobles, Community Inspections Officer, testified that the house and fascia were missing paint and the house numbers were not visible from the street. He presented photographs of the property to Ms. Zann.

Mr. Arthur Head, respondent, stated that he was experiencing financial difficulties and was about to be deployed in the army. He therefore requested additional time to comply. Mr. Nobles agreed to allow 7 days for the house numbers to be applied and 6 months to complete house painting.

Ms. Zann found in favor of the City and ordered compliance with 9-313(a), within 7 days or a fine of \$25.00 per day would be imposed and with Section 9-306 within 180 days or a fine of \$50.00 per day would be imposed.

Reference CE03121852

Fred & Greta Taylor
7 North Birch Road
Tenant: Interlude 5

Continued from February 19, 2004

The City Attorney requested a continuance to March 18, 2004.

Ms. Zann granted a continuance to March 18, 2004.

Reference CE04011538

Danny Lee
215 Southwest 17th Street

Sec. 9-280(g): Electrical components in disrepair;
Sec. 47-22.6 E: Unpermitted signs on property

Ms. Bazer announced that certified mail was accepted on February 17, 2004.

Mr. Alberto Benavides, Community Inspections Officer, testified that there were 2 unpermitted electrical lamps and 2 unpermitted signs in the front yard. He presented photographs of the property to Ms. Zann and recommended 21 days to comply or a fine of \$100.00 per day per violation.

Ms. Zann found in favor of the City and ordered compliance within 21 days or a fine of \$100.00 per day, per violation would be imposed.

Reference CE03111156

Tarpon Arms, Inc.
1706 Northwest 9th Street

Sec. 9-280(b): Structure or Fixtures in disrepair;
Sec. 9-280(g): Electrical components in disrepair;
Sec. 9-280(h)(1): Fence in disrepair;
Sec. 9-281(b): Rubbish, trash, and
inoperable, unlicensed vehicles on property;

Sec. 9-306: Structure not maintained;
Sec. 47-20.13 A: Driveway in disrepair;
Sec. 47-21.8: Landscape maintenance;
Sec. 47-34.1 A.1: Permitted uses: storage of vehicles;
Sec. 9-278(g): Missing/torn screens

Ms. Bazer announced that certified mail had been accepted on February 17, 2004 and personal service had been made by Inspector Donovan on February 23, 2004.

Mr. Mike Donovan, Community Inspections Officer, presented a copy of the new owner's bill of sale to Ms. Zann and explained that he had spoken with the new owners and had a stipulated agreement with the owner to comply the property within 60 days or a fine of \$25.00 per day per violation.

Ms. Zann accepted the stipulated agreement and ordered compliance within 60 days or a fine of \$ 25.00 per day, pre violation would be imposed.

Reference CE04011506

Joann Johnson
829 Northwest 14th Way

Sec. 18-27(a): Trash and overgrowth on property;
Sec. 9-281(b): Rubbish, trash, and inoperable, unlicensed vehicle on property

Ms. Bazer announced that certified mail was accepted on February 25, 2004 and personal service was made by Inspector Malik on February 14, 2004.

Mr. Mike Donovan, Community Inspections Officer, testified that the property was strewn with trash, rubbish and overgrowth and there were unlicensed, inoperable vehicles on the property. He had spoken with the owner and agreed to recommend 21 days to comply or a fine of \$50.00 per day per violation. He also presented photographs of the property to Ms. Zann.

Ms. Zann found in favor of the City and ordered compliance within 21 days or a fine of \$50.00 per day, per violation would be imposed.

Reference CE04010872

Sharon Sols
3300 Northwest 63rd Street

Sec. 9-306: Peeling paint/stained surfaces;
Sec. 9-281(b): Rubbish, trash, and inoperable, unlicensed vehicle on property

Ms. Bazer announced that certified mail was accepted on February 17, 2004.

Mr. Skip Margerum, Community Inspections Officer, testified that paint on the building was chipped and peeling and the property was strewn with trash, rubbish and an unlicensed, inoperable vehicle. He presented photographs of the property (taken by Inspector Margerum) and recommended 30 days to comply or a fine of \$50.00 per day per violation.

Ms. Zann found in favor of the City and ordered compliance within 30 days or a fine of \$50.00 per day, per violation would be imposed.

Reference CE04012083

Olive Services, Inc.
2960 North Federal Highway

Sec. 9-281(b): Rubbish and trash on property

Ms. Bazer announced that personal service had been made to the registered agent by Supervisor Susan Batchelder on March 1, 2004.

Mr. Len Ackley, Community Inspections Officer, testified that the property was strewn with trash and rubbish. He had spoken with the owner and agreed to recommend 21 days to comply or a fine of \$100.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 21 days or a fine of \$100.00 per day would be imposed.

Reference CE04010162

Douglas Fleishman
1816 Northeast 11th Avenue

Sec. 9-281(b): Unlicensed, inoperable vehicles
on property

Ms. Bazer announced that certified mail had been accepted on February 26, 2004.

Mr. Burt Fletcher, Community Inspections Officer, testified that there was an unlicensed, inoperable grey Acura, blue Toyota Paseo, blue Ford truck and other vehicles on the property. He presented photographs of the property to Ms. Zann and recommended 7 days to remove the vehicles or a fine of \$100.00 per day or the vehicles would be towed.

Ms. Zann found in favor of the City and ordered the vehicles removed within 7 days or a fine of \$100.00 per day would be imposed or the vehicles would be towed.

Reference CE03101667

Carl & Frances Welch
1610 Northeast 2nd Court

Sec. 25-56(a): Sidewalk in disrepair

Ms. Bazer announced that certified mail had been accepted on February 18, 2004.

Ms. Ursula Thime, Community Inspections Officer, testified that the sidewalk was in poor condition. She presented photographs of the property and informed Ms. Zann that she had communicated with the owner and agreed to recommend 45 days to comply or a fine of \$25.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 45 days or a fine of \$25.00 per day would be imposed.

Reference CE04010058

Carmella Cerasa
1637 Northeast 9th Street

Sec. 9-281(b): Rubbish, trash and overgrowth on property; Sec. 9-313(a): Required display of address

Ms. Bazer announced that certified mail had been accepted on February 27, 2004.

Ms. Ursula Thime, Community Inspections Officer, testified that the property was strewn with trash and overgrowth; Section 9-313(a) was now complied. Ms. Thime had spoken with the nephew of the owner and agreed to recommend 30 days to comply Section 9-281(b) or a fine of \$ 25.00 per day.

Ms. Zann found in favor of the City and ordered compliance with Section 9-281(b) within 30 days or a fine of \$25.00 per day would be imposed.

Reference CE04020496

Intervest-Villa Ltd
1515 Southeast 17th Street #101
Tenant: Coldwell Banker: S. Phillips

Sec. 15-28: Required occupational license

Ms. Bazer announced that certified mail addressed to a general partner had been accepted on February 20, 2004; certified mail addressed to the registered agent had been accepted on February 18, 2004, and certified mail addressed to the tenant had been accepted (no date on card).

Ms. Waynette Smith, Occupational License Inspector, testified that the company was engaged in business without an occupational license. She recommended 14 days to comply or a fine of \$25.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 14 days or a fine of \$25.00 per day would be imposed.

Reference CE04020502

Intervest-Villa Ltd

Sec. 15-28: Required occupational license

1515 Southeast 17th Street #101
Tenant: Coldwell Banker: D. Egizi

Ms. Bazer announced that certified mail addressed to a general partner had been accepted on February 20, 2004; certified mail addressed to the registered agent had been accepted on February 18, 2004, and certified mail addressed to the tenant had been accepted (no date on card).

Ms. Waynette Smith, Occupational License Inspector, testified that the company was engaged in business without an occupational license. She recommended 14 days to comply or a fine of \$25.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 14 days or a fine of \$25.00 per day would be imposed.

Reference CE04020726

Santa Ana Inc.
1306 Southeast 17th Street Sec. 15-28: Required occupational license
Tenant: Coldwell Banker, J. Oberholtzer

Ms. Bazer announced that certified mail addressed to the registered agent and the tenant had both been accepted (no date on card).

Ms. Waynette Smith, Occupational License Inspector, testified that the company was engaged in business without an occupational license. She recommended 14 days to comply or a fine of \$25.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 14 days or a fine of \$25.00 per day would be imposed.

Reference CE04011226

Martin & Helmine Orendt TR Sec. 9-281(b): Unlicensed, inoperable vehicle
2716 Northeast 32nd Street on property

Ms. Bazer announced that certified mail had been accepted on February 17, 2004.

Mr. Frank Stockinger, Community Inspections Officer, testified that there was an unlicensed, inoperable black 4-door Mazda on the property. He presented a photograph of the vehicle and recommended 7 days to remove it or a fine of \$100.00 per day, or the vehicle would be towed.

Ms. Zann found in favor of the City and ordered the vehicle removed within 7 days or a fine of \$100.00 per day would be imposed or the vehicle would be towed.

Reference CE04011535

John Mour
5210 Northeast 31st Avenue

Sec. 9-281(b): Unlicensed, inoperable vehicle
on property

Ms. Bazer announced that personal service had been made by Inspector Stockinger on March 2, 2004.

Mr. Frank Stockinger, Community Inspections Officer, testified that there were 2 unlicensed black Mercedes Benzes on the property. He had spoken with the owner and agreed to recommend 7 days to remove the vehicles or a fine of \$100.00 per day, or the vehicles would be towed. He presented photographs of the vehicles to Ms. Zann.

Ms. Zann found in favor of the City and ordered the vehicles removed within 7 days or a fine of \$100.00 per day would be imposed or the vehicles would be towed.

Reference CE04020248

Zeshan Usman
1420 Northeast 50th Court

Sec. 24-27(b): Garbage carts left in right-of-way

Ms. Bazer announced that personal service had been made by Inspector Stockinger on March 2, 2004.

Mr. Frank Stockinger, Community Inspections Officer, testified that the trash carts were continually left in the swale. He presented photographs of the property and recommended 7 days to comply or a fine of \$50.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 7 days or a fine of \$50.00 per day would be imposed.

Reference CE04010625

Brenton Gordon
1225 Northwest 18th Court

Sec. 9-281(b): Rubbish, trash, and inoperable,
unlicensed vehicles on property

Ms. Bazer announced that certified mail had been accepted on February 19, 2004.

Ms. Cheryl Pingitore, Community Inspections Officer, testified that there was trash and other rubbish on the property, including an unlicensed, inoperable blue Mazda pickup truck. She presented photographs of the property taken on 2 occasions and recommended 7 days to comply or a fine of \$100.00 per day or the vehicle would be towed.

Ms. Zann found in favor of the City and ordered compliance within 7 days or a fine of \$100.00 per day would be imposed or the vehicle would be towed.

Reference CE04020595

Wesley Johnson
3910 Southwest 12th Court

Sec. 1 1-10.1: Inoperable exit light;
Sec. 1 1-4.4: Storage in meter room;
Sec. 10 4-4.1: Fire extinguisher maintenance

Ms. Bazer announced that certified mail had been accepted on February 19, 2004.

Mr. Thomas Clements, Fire Inspector, testified that the exit light on the second floor did not operate on A/C power; Sections 1 1-4.4 and 10 4-4.1 were now complied. He recommended 14 days to comply Section 1 1-10.1 or a fine of \$50.00 per day.

Ms. Zann found in favor of the City and ordered compliance with Section 1 1-10.1 within 14 days or a fine of \$50.00 per day would be imposed.

Reference CE03102504

Tarpon Arms, Inc.
1151 Northwest 17th Avenue

Sec. 47-21.8 A: Landscape maintenance;
Sec. 9-281(b): Inoperable, unlicensed vehicles on property;
Sec. 9-306: Structure not maintained;
Sec. 9-308 (b): Roof in disrepair

Ms. Bazer announced that certified mail addressed to the registered agent had been accepted on February 17, 2004.

Mr. Andre Cross, Community Inspections Officer, testified that there were areas of bare sand on the property; there were spots of chipped and stained paint on the building, and the roof had trash strewn on it; Section 9-281(b) was now complied. He presented photographs of the property and recommended 30 days to comply Sections 47-21.8 A and 9-306 and 7 days to comply Section 9-308(b) or a fine of \$25.00 per day, per violation.

Ms. Zann found in favor of the City and ordered compliance with Sections 47-21.8 A and 9-306 within 30 days and with Section 9-308(b) within 7 days or a fine of \$25.00 per day, per violation would be imposed.

Reference CE03111733

Keith & Charmaine Morgan
1609 Northwest 14th Street

Sec. 9-306: Structure not maintained

Ms. Bazer announced that certified mail had been accepted on February 17, 2004 and personal service had been made by Inspector Guilford on February 8, 2004.

Mr. Andre Cross, Community Inspections Officer, testified there were areas of dirty, chipped paint on the building. He presented photographs of the property and recommended 30 days to comply or a fine of \$25.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 30 days or a fine of \$25.00 per day would be imposed.

Reference CE04011048

Ruthie Mae Hill
1795 Lauderdale Manors Drive

Sec. 47-34.1 A.1: Permitted uses: furniture storage

Ms. Bazer announced that certified mail had been accepted on February 17, 2004.

Mr. Andre Cross, Community Inspections Officer, testified that there was furniture stored in the carport. He presented photographs of the property and recommended 10 days to comply or a fine of \$25.00 per day.

Ms. Zann found in favor of the City and ordered compliance within 10 days or a fine of \$25.00 per day would be imposed.

Reference CE03110574

1 P.M.

Swiss Beach Holdings
229 South Ft. Lauderdale Beach Boulevard
Tenant: Blondie's on the Beach

Continued from February 19, 2004

Ms. Bazer announced that this case was continued from February 19, 2003.

Mr. Kenneth Tyson, Community Inspections Officer, presented photographs of the property taken at various times, a history of the property, and a copy of the relevant ordinance: Section 47-22.3 R to Ms. Zann; all of this was accepted into evidence. He read the ordinance aloud, "Sidewalk sandwich or movable signs are hereby prohibited." He explained where the signs were located and pointed out that no matter where the sign was located, moveable signs were not allowed; only permanently mounted, permitted signs were allowed. When applying for a sign permit, the City required that the permanent location of the sign be indicated.

The City Attorney noted that Ms. Zann had also been provided a copy of the order of the June 2003 case that found the property owner had violated Section 47-23.3 R. This was therefore a repeat violation and could be fined retroactive to the date of the Notice of Violation. The Post Office had attempted to deliver the NOV three times and it was returned unclaimed on December 2, 2003. The City wanted fines to begin on December 2, 2003 and continue to March 3, 2004, the last date Inspector Tyson had taken photographs, at the rate of \$100.00 per day.

Mr. Sam Coffey, attorney for the respondent, stated that he would like to make some reservations. The first was an England Reservation, to reserve all federal actions as they were not arguing them here today. In addition, he was attacking the code as it violated the first and fourteenth amendments, the right to free speech and the equal protection clauses. He felt that this process lacked procedural safeguards in the administrative process. There was no right to discovery; the process did not allow the Special Master to consider defenses, and the ordinance was unreasonably vague and lacked the proper guidelines to assist the property owner and the inspectors in determining what constituted a violation. Mr. Coffey would present testimony from Inspector Guilford's deposition and Mr. Tyson demonstrating the vagueness of the ordinance.

According to Mr. Tyson's previous testimony, a menu or directional sandwich sign was not prohibited by the ordinance and Mr. Toomey's signs had been designed using the information provided by Inspector Tyson. Mr. Coffey explained that the signs in the more recent photographs demonstrated this. Ms. Zann suggested that the two groups of photographs be split into City exhibits A and B to differentiate their differences in design. The copy of the ordinance and the property's violation history would be marked as City Exhibits C and D respectively.

Mr. Coffey continued that the ordinance also violated the case of *Metromedia Inc. vs. the city of San Diego*. He also made a *Jennings vs. Caddo Parish School Reservation*. He explained that the *Metromedia* case stated that the ordinance should be drawn narrowly enough so that it satisfied the City's interest but did not unreasonably inhibit the business's right to free speech or to advertise.

Ms. Zann asked if there was a more detailed explanation of the ordinance in the code. Mr. Coffey explained that there was not; they had relied on the detailed depositions.

Mr. Coffey explained the *Jennings vs. Caddo Parish School reservation*. Mr. Coffey was exposing the federal claims to Ms. Zann as the hearing officer but reserved the right to litigate in federal court if need be.

Mr. Coffey informed Ms. Zann that he was appealing the City's earlier cases against his client in Appellate Court. The city was asking Ms. Zann to use the prior order to increase penalties for the current violation. Mr. Coffey was to appear on April 20 before Judge Mao and a decision should be rendered shortly thereafter which would resolve the older issues and the issues of this case as well.

Ms. Zann asked the City to address this issue. The City Attorney stated that appeals often occurred after the City found violations and imposed fines. If the order were vacated, any and all fines would need to be addressed at that time. The City Attorney stated that this was a different violation; the facts were almost the same; the signs were similar; the dates were different. They were not relitigating the 2003 violation. Ms. Zann asked if there was some particular aspect of administrative law that allowed the City to continue enforcing its laws even though it was taken up on appeal. The City Attorney noted that an appeal might

be granted for a variety of reasons, many of which were unrelated to the finding of a violation. Mr. Toomey assured Ms. Zann that everyone involved knew what the issues were; they were not procedural. The City Attorney noted that Mr. Coffey had filed a motion for a protective order against the City and been denied. This case had been postponed specifically to allow for that decision to be made before going forward.

Mr. Coffey stated that Judge Rosenberg threw the case back to Judge Mao; he stated that he would not enjoy the "police power of the City" while Judge Mao was hearing this issue.

Mr. Coffey asked Mr. Tyson to describe how he entered the building and Mr. Tyson gave a detailed description to which the City Attorney objected several times. Mr. Coffey then asked Mr. Tyson if he was the individual who acted as a task force for this particular sign ordinance. Mr. Tyson stated that he concentrated on signs and landscaping but did many things in addition to citing property owners for sign violations. Mr. Coffey asked if Mr. Tyson was "tasked" by the City as a person to deal with signs. Mr. Tyson stated that he did cover signs, but dealt with other issues as well.

Mr. Coffey clarified that Mr. Tyson had cited Blondie's for 2 signs at 2 locations. He asked if Mr. Tyson had tried to move one of the signs on March 3, 2004; Mr. Tyson replied that he had not. Mr. Coffey asked if the sign (in the first photograph) was within the structure of the building; Mr. Tyson replied that it was. Mr. Coffey asked how Mr. Tyson could cite a sign within the structure of a building and Mr. Tyson answered that it did not matter where a sign was located on the property; a movable sign violated the ordinance. Mr. Coffey asked Mr. Tyson if the sign (in another photograph) was within the structure of the building; Mr. Tyson replied that it was not; it was outside. Mr. Coffey clarified that the sign was on top of a raised platform the owner had obtained a permit to build. Mr. Tyson noted that the sign was not a secure sign and did not have a permit. Mr. Coffey clarified that this type of sign could not be permitted and the permit was not at issue; Mr. Tyson agreed. Mr. Coffey again asked Mr. Tyson if the sign was within the structure; Mr. Tyson again replied that it was not; it was outside. Mr. Coffey asked if the sign would be illegal if it were inside the structure; Mr. Tyson replied that it would not be illegal if it were inside the doors. Mr. Coffey asked Mr. Tyson if the folding signs in the City Hall lobby were illegal; Mr. Tyson replied that indoor moveable signs were not illegal.

The City Attorney objected to the discussion of signs in City Hall or elsewhere. They were here to discuss the signs located at 229 South Ft. Lauderdale Beach Boulevard. It was within the City's police power to regulate the time, place and manner of commercial speech. Ms. Zann asked Mr. Coffey if he was trying to bring up the issue of the patio area's being considered inside the structure. Ms. Zann thought Mr. Tyson was stating that the statute referred to any sign outside the building, whether on the roof, on a patio, or on a sidewalk. The City Attorney objected and stated that the question of whether or not the ordinance was vague was outside the jurisdiction of this forum.

Mr. Coffey asked Mr. Tyson to read the ordinance. Mr. Tyson read, "Sidewalk, sandwich or moveable signs are hereby prohibited." Mr. Tyson stated that the ordinance did not

specifically refer to the “inside” or “outside” of a structure. Mr. Coffey further clarified with Mr. Tyson that the ordinance did not mention menu boards. He asked Mr. Tyson if Mr. Tyson had testified previously that menu boards were allowed; he produced copies from a deposition Mr. Tyson had given for him to read and refresh his recollection. The City Attorney objected, stating that this had not been a deposition but a conversation that took place in Mr. Coffey’s office. She noted that depositions were not permitted or required of witnesses in Chapter 162 proceedings; they were a component of the rules of civil procedure that applied to civil actions taking place in court. This had not been a deposition even though Mr. Coffey was characterizing it as such.

Mr. Coffey noted that this deposition was taken during the last case; the City Attorney was present and the witnesses were sworn. Information given by Mr. Tyson at this deposition was used to alter the design of the signs to bring them into compliance. Ms. Zann asked the City Attorney if there was some statute or section of code stating that depositions could not be used in administrative proceedings. The City Attorney presented copies of Article 1 Section 18 of the State Constitution stating: “No administrative agency shall impose any other penalty except as provided by law.” She then pointed out that this forum was created by statute. Administrative agencies created by statutes were limited to doing only what the statute stated they could do. Ms. Zann asked if a Notice of Taking deposition had been filed; the City Attorney replied that there were several notices of subpoenaed depositions that were handled by another Assistant City Attorney who had subsequently resigned. When the Assistant City Attorney was given the case, she immediately advised Mr. Coffey that no depositions were permitted and the City would not attend any depositions. In the interest of resolving the issue, they had gone to Mr. Coffey’s office to “sit for an hour or two for conversation about this.” It was recorded and Mr. Coffey characterized it as a deposition but when the Assistant City Attorney arrived, she informed Mr. Coffey, “This isn’t a deposition; we’re not here for a deposition; we’re here to talk.”

Mr. Coffey stated that it took him a couple of months to get the deposition scheduled and at the conclusion they agreed, on the record, to return for a second. Since then, they had refused to return. Mr. Coffey wanted to use the deposition today and allow Ms. Zann to decide if she wanted to give it weight.

The City Attorney quoted from the statute that created the Code Enforcement Board, “An agency only has such powers as expressly or necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and as a creature of statute had no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction.” She explained that this forum had only the powers enumerated in 162.8 and no others. Ms. Zann stated that she felt she could not admit a deposition into evidence that the powers of Section 162 did not provide. She stated she understood the property owner’s desire to understand what the City expected of him and she would accept it as a conversation and allow Mr. Coffey to question witnesses about it. Mr. Coffey confirmed that Ms. Zann would not accept it into evidence. Ms. Zann stated that this administrative proceeding did not have the same scope as a civil procedure. Mr. Coffey noted that this was sworn testimony under oath and the City Attorney had made

objections on the record throughout the course of the transcript so it was in the form of a deposition. Ms. Zann stated that she could only operate on the level of power given to her, which did not include taking depositions. Mr. Coffey requested that Ms. Zann read and consider the transcript to prevent the City from telling Mr. Coffey that he never made a request that the Special Master read the transcript. Ms. Zann told Mr. Coffey that he made his request very well but it was denied. Mr. Coffey asked if he could use the document to refresh Mr. Tyson's memory and not admit it into evidence. The City Attorney objected stating that this conversation was held pursuant to the 2003 case; "so if it was a subpoena, and if it was a deposition, it was not for the case we're here for today; it was for a different case."

Ms. Zann stated that the conversation took place between the property owner, the City agent and the attorney to determine exactly what the interpretation of the statute was so the property owner could attempt to come into compliance. The City Attorney stated that they need not rely on this document because the inspector was present and could be asked right now. Ms. Zann thought the deposition was being referred to because the witness did not recall making a statement regarding the parameters of the ordinance.

Mr. Coffey asked if Mr. Tyson was here in his capacity as the "person with most knowledge" concerning this ordinance from the City of Ft. Lauderdale, as he was prepared for on the day of the deposition. The City Attorney countered that Mr. Tyson was not at a deposition, and he was here as a witness to the sign violation and had testified to this. Ms. Zann felt Mr. Coffey could ask Mr. Tyson about his expertise concerning the ordinance. Mr. Coffey asked if Ms. Zann would accept the deposition as a sworn statement, under oath of Mr. Tyson, for the purpose of impeachment. Ms. Zann said that she would uphold the City Attorney's objection to accepting the document.

Mr. Coffey asked Mr. Tyson if he was the person with the most knowledge from the City of Ft. Lauderdale regarding this sign ordinance. Mr. Tyson replied that he did not necessarily know more about signs than any other inspector in Ft. Lauderdale. Mr. Coffey stated that there was a problem, as at the deposition, Mr. Tyson stated that he was the person with the most knowledge. Ms. Zann clarified that Mr. Tyson was the most knowledgeable about this sign violation case, since he was the inspector who cited the property.

Mr. Coffey asked Mr. Tyson if directional signs were legal; Mr. Tyson replied that they were only legal on "your own" property, not city property. If they were in the right-of-way or obstructing the sidewalk, the City would instruct the owner to move them. Ms. Zann asked if there was a specific definition of directional signs in the code. Mr. Coffey asked, "If it's a directional sign and it's moveable, is it allowed if it's on private property?" Mr. Tyson replied that all signs must be secure, not moveable.

Mr. Coffey asked Mr. Tyson if parking signs were allowed. Mr. Tyson answered that they were, but all signs had to be secured. Mr. Coffey asked if the City was allowed to have moveable signs; Mr. Tyson replied that they were not. When asked if the City was allowed to have moveable directional signs, Mr. Tyson stated that it was not. Mr. Coffey asked if

the City was allowed to have moveable parking signs; Mr. Tyson said that the City tried not to regulate parking signs. Mr. Coffey stated that Mr. Tyson had stated just the opposite during the deposition.

Mr. Coffey showed the City Attorney defendant's exhibits 1 and 2. The City Attorney objected that the photographs Mr. Coffey presented were not relevant to whether signs at 229 South Ft. Lauderdale Beach Boulevard were in violation of Section 47-22.3 R. She felt Mr. Coffey was trying to make an equal protection or selective enforcement argument that this court did not have the jurisdiction to hear. She cited Key Haven Associated Enterprises vs. the Board of Trustees of the Internal Improvement Fund to explain that this would encroach on the jurisdiction of the judiciary and was not permitted.

Mr. Coffey explained that he was facing arguments in the Appellate and Circuit Court actions that they had waived the right below by not presenting arguments [to the Special Master] or they had failed to exhaust administrative remedies by going to the circuit court before the appellate process was exhausted. Ms. Zann asked if he could not present his arguments on appeal. Mr. Coffey replied that he had to be allowed to present his evidence here today. Ms. Zann admitted that this type of administrative hearing was not set up to hear equal protection or selective enforcement arguments; that would bog down the entire process. Mr. Coffey stated his England reservation to address the lack of procedural safeguards in the administrative process that enforces this ordinance. Mr. Coffey's client could ultimately spend time in jail for the violation and Mr. Coffey wondered how it was possible he was not entitled to enter evidence to prevent that. Ms. Zann accepted Mr. Coffey's photographs as defendant's exhibits 1 and 2. Mr. Coffey informed Ms. Zann that he intended to submit about 500 photographs of selective enforcement; these 2 exhibits were of City moveable parking signs that were in direct contradiction to Mr. Tyson's testimony. Ms. Zann warned that this proceeding was not set up for her to hear a selective enforcement argument. She asked Mr. Coffey if the Appellate Court ruling that if he did not bring something up before the Special Master the Appeals Court would not hear it. Mr. Coffey corrected that the City was making those arguments in its briefs.

The City Attorney said the City had admitted that it was appropriate on appeal to raise constitutional issues even if those issues had not been raised in the agency hearing because there was no jurisdiction to hear constitutional cases here. Ms. Zann asked if the City was willing to waive any argument that may be raised later in this case that the property owner failed to raise constitutional issues at the agency hearing level. The City Attorney agreed to stipulate that all of these arguments were outside the scope of this forum and the City would not challenge the facial constitutional challenge on the basis that it was not brought up here.

Ms. Zann asked if Mr. Coffey could "tick off" his list of arguments. Mr. Coffey replied that this would expose the layout of his case to potential witnesses without his being allowed to take testimony. Ms. Zann reminded him that this was not a "full blown" hearing; Mr. Coffey countered that his client could go to jail, the City could take his client's property, and he could be fined \$500.00 per day.

The City Attorney explained that these proceedings were conducted in accordance with the Local Government Code Enforcement Board Act that provided for specific fines, liens, and foreclosure. The part of Chapter 162 that concerned the imposition of jail sentences was not followed by Ft. Lauderdale's code enforcement hearings. No one was talking about sending Mr. Toomey to jail.

Ms. Zann suggested that Mr. Coffey make a composite exhibit for proffer and offered him additional time to create it. This would remove any question about what Mr. Coffey had tried to bring up before the Special Master. Mr. Coffey informed Ms. Zann that he had already done this and a previous Special Master had ruled against it. The record went up on appeal to Circuit Court and the proffer had not gone with it. Mr. Coffey had spoken with the City Attorney about adding it to the record as it was proffered before the ruling; the City objected and fought it at the Appellate Court. The City Attorney promised that the City would not do this again. The proffered composite exhibit would accompany this record. She wanted to be clear that the property owner had made diligent efforts to make every possible argument and the City had strenuously objected on the grounds that under the rules, this was a very limited proceeding.

Mr. Coffey asked to view the original Notice of Violation to determine whether jail time is indicated on it. The City Attorney asked to explain but Ms. Zann pointed out, "It does say you can appear and you can face a jail sentence from 1 to 90 days in the Ft. Lauderdale city jail." Mr. Coffey had raised these issues before and this was the first time the City stipulated that there would be no jail time. The City Attorney stated that this was not a Notice of Violation but an inspection report or a "courtesy notice." This was not part of the Local Government Code Enforcement Board Act. The actual Notice of Violation did not threaten jail time.

The City Attorney presented copies of Chapter 162 and Ms. Zann noted that according to Chapter 162 the Special Master hearings were meant to be "an equitable, expeditious effective and inexpensive method" for enforcing codes and ordinances. Ms. Zann felt she needed to proceed with the violation at hand and told Mr. Coffey to submit the proffer to the City within 10 days for the record.

Mr. Coffey wanted to question Mr. Tyson regarding Mr. Coffey's photographic exhibits as Mr. Coffey felt he needed to obtain a ruling from Ms. Zann for his presentation. Ms. Zann had no problem with this but the City Attorney objected as she had already stipulated that there were violations all over town, all the time. Ms. Zann allowed Mr. Coffey's questions over the City Attorney's objection.

Mr. Coffey asked Mr. Tyson about photographs of parking signs the City utilized at public parking garages. Mr. Tyson did not believe that he had ever seen the first photograph before but Mr. Coffey stated that he had shown it to him at his office. Mr. Coffey asked if this was an illegal sign and Mr. Tyson stated, "probably not because it's an informational sign." Mr. Coffey asked if this was based on Mr. Tyson's interpretation of Section 47-22.3 R. Mr. Tyson then admitted that "We generally don't address signs like this; you can find

signs like this all over the city.” Mr. Coffey asked Mr. Tyson to clarify that the signs they were discussing were placed by the City; Mr. Tyson admitted that some were.

Mr. Coffey attempted to address another photograph with Mr. Tyson and refer to the meeting at Mr. Coffey’s office but Ms. Zann cut him off, telling him she could not consider any kind of selective enforcement argument. Mr. Coffey objected to Ms. Zann’s not allowing him to admit the deposition or question the witness. Ms. Zann stated they needed to move on to the actual violation. Mr. Coffey requested a break.

Mr. Coffey had asked during the break to see the inspection report, the Notice of Violation and Mr. Tyson’s file. The City Attorney gave him a copy of the NOV and the inspection report and advised him to call Code Enforcement and a supervisor would make Mr. Tyson’s files available to him.

Mr. Coffey asked Mr. Tyson if he had looked at his file prior to testifying today. Mr. Tyson admitted that he had not; he had only added the recent photographs to it. Ms. Zann itemized City exhibits A and B: the photographs of the signs at various times, and C and D: C was a copy of the statute and D was a list of the property’s inspection history. Ms. Zann would accept the 2 exhibits already proffered by the defendant and any other proffer he would make within 10 days.

Mr. Coffey asked Mr. Tyson to describe the location of the sign in one of Mr. Tyson’s photographs. Mr. Tyson stated that the sign was near a city-owned tree. The City Attorney then stated the City’s right to enforce ordinances on all property within the City, whether the property was private, city-owned or state-owned. Mr. Coffey asked Mr. Tyson how he knew the trees were city-owned. Mr. Tyson stated that he knew the City had planted the trees there. Mr. Coffey contended that the City did not have the right to enforce ordinances on state-owned property. Ms. Zann felt it did and they examined the code for specific language. The City Attorney stated that the City leased part of the right-of-way from the State. Ms. Zann informed Mr. Coffey that they were “not going down this road”, she was assuming the sidewalk was City property and the City had a right and obligation to keep the law enforced. She refused to hear any more argument from Mr. Coffey and advised him to take it on appeal.

Mr. Coffey asked Mr. Tyson if he moved the sign when he witnessed it yesterday. Mr. Tyson answered that he did not move it but witnessed an employee of Mr. Toomey’s move it. Mr. Tyson remembered that the sign used to be chained to a tree and he had advised Mr. Toomey a year earlier that the chain made it look unprofessional. Mr. Toomey told Mr. Tyson he was worried that the sign would be stolen if left out without the chain but Mr. Tyson had assured him that no one would steal the sign if he removed the chain. Mr. Toomey had subsequently removed the chain and the sign had not been stolen. Mr. Coffey asked Mr. Tyson how long after this exchange he began citing Mr. Toomey for the sign. Mr. Coffey asked Mr. Tyson if he was sure the sign at the rear entrance was moveable and Mr. Tyson explained that the sign was not present early in the morning so it must be moveable.

Mr. Coffey asked Mr. Tyson if directional signs were a violation. Mr. Tyson stated that they (inspectors) did not tend to address directional signs as they usually consisted of a brief explanation and an arrow. Mr. Coffey asked if the sign in exhibit B was directional in nature. The City Attorney objected, stating that the City did not regulate the content of signs; the issue was simply whether or not the sign was moveable. Ms. Zann agreed, sustained the objection, and advised Mr. Coffey to take this on appeal.

Ms. Zann refused to take any arguments from Mr. Coffey concerning other properties. Mr. Coffey and Ms. Zann discussed Mr. Coffey's proffer and additional testimony from his client.

Ms. Zann asked Mr. Coffey if his client ever called Mr. Tyson to reinspect the property to ensure that the redesigned signs complied. Mr. Coffey started to mention the other signs in the area just like Mr. Toomey's; Ms. Zann restated her question and Mr. Coffey admitted that his client had not.

Ms. Zann found that the violation existed from December 12, 2003 to March 3, 2004 and a fine of \$100.00 per day would be imposed. She stopped fines from accruing and ordered compliance within 7 days, by March 12, or a fine of \$100.00 per day would begin again.

The City Attorney wanted Ms. Zann to clarify whether she would allow a transcript of what Mr. Coffey referred to as the deposition to be included with Mr. Coffey's proffer. Ms. Zann stated that she would not allow it, and Mr. Coffey could take this on appeal as well. Mr. Coffey asked her about it and Ms. Zann changed her mind and agreed to allow it as part of the proffer.

Cases Complied

Ms. Bazer announced that the below listed cases were in compliance. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE03100684	CE04011661	CE04011663	CE04010875
CE03021385	CE04010584	CE04010237	CE04011679
CE04011530	CE04020498	CE04020506	CE03120554
CE04011922	CE04020579	CE04020587	CE04020597
CE04020600	CE04020626	CE03111739	CE03120402
CE03120406	CE03120943	CE04010151	CE04010570

Cases Pending Service

Ms. Bazer announced that the below listed cases had been withdrawn pending service to the respondents. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE04011120	CE03091333	CE03101371	CE03081254
CE04020636	CE04011326	CE03061979	CE03051560
CE03120858	CE04010868	CE03051398	CE03120199
CE03120207	CE04010467		

Cases Rescheduled

Ms. Bazer announced that the below listed cases had been rescheduled. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE04011363	CE03102116	CE03060130	CE04010420
CE04010714	CE04010999	CE04011001	

Cases Withdrawn

Ms. Bazer announced that the below listed cases had been withdrawn. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE04010566

There being no further business, the hearing was adjourned at 3:45 P.M.

Special Master

ATTEST:

Clerk, Special Master