

SPECIAL MAGISTRATE HEARING
City Commission Meeting Room
Ms. Meah Tell Presiding
October 20, 2005
9:00 A.M. – 11:48 A.M.

Staff Present:

Eve Bazer, Community Inspections Acting Assistant Director
Assistant City Attorney
Dick Eaton, Secretary, Special Magistrate
Leonard Ackley, Community Inspections Officer
Troy Balint, Environmental Inspector
Lindwell Bradley, Community Inspections Acting Assistant Director
Peggy Burks, Community Inspections Officer
Thomas Clements, Fire Inspector
Andre Cross, Community Inspections Officer
John Gossman, Community Inspections Officer
Robert Guilford, Community Inspections Officer
Deborah Haskins, Community Inspections Supervisor
John Hudak, Community Inspections Officer
Karl Lauridsen, Community Landscape Officer
Gilbert Lopez, Community Inspections Officer
Al Lovingshimer, Community Inspections Officer
Mike Maloney, Community Inspections Officer
Skip Margerum, Community Inspections Officer
Cheryl Pingitore, Community Inspections Officer
Ursula Thime, Community Inspections Officer
Robert Urow, Community Inspections Officer
Salvatore Viscusi, Community Inspections Officer

Also Present:

CE04121073, CE04121067, CE04121066, CE04121071, CE04121072: Hope Calhoun,
owner's representative
*CE05020766: Girard Richardson, owner
CE04110315: Janet Erlick, director
CE06071126: Luis LaLier, owner's friend
CE05090235: Frank Raffetto, building superintendent; David Damereau, owner; Robert
Heaton, owner's agent; Jim Brady, owner's attorney
CE05051713: Charles Ralston, owner
CE05031674: Jimmy Oglesby, owner
CE05051549, CE05051551, 05051554: Hadiga Haider, owner
CE05090450: Parasram Bitna, owner

*Hearing to Impose Fine

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

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

The following 5 cases were considered together:

Reference CE04121066

Downtown Loft Developers
300 Northwest 2nd Street

Request for Extension

Ms. Hope Calhoun, the owner's representative, explained that the owner had obtained site plan approval in July to redevelop the property. She requested a 6-month extension to demolish the existing structure and comply the property.

Mr. John Gossman, Community Inspections Officer, said he had no objection to a 6-month extension.

Ms. Tell granted a 180-day extension.

Reference CE04121067

Downtown Loft Developers
117 Northwest 3rd Avenue

Request for Extension

Ms. Tell granted a 180-day extension.

Reference CE04121071

Downtown Loft Developers
306 Northwest 2nd Street

Request for Extension

Ms. Tell granted a 180-day extension.

Reference CE04121072

Downtown Loft Developers
320 Northwest 2nd Street

Request for Extension

Ms. Tell granted a 180-day extension.

Reference CE04121073

Downtown Loft Developers
108 Northwest 4th Avenue

Request for Extension

Ms. Tell granted a 180-day extension.

Reference CE04110315

Fort Lauderdale Children's Theater
640 North Andrews Avenue

Request for Extension

Ms. Janet Erlick, theater director, explained that they had formed a partnership with Alliance Housing Inc. and the property would be developed as mixed-use space with affordable housing and a new children's theater. They were currently working on the construction timeline, a copy of which Ms. Erlick provided to Ms. Tell that was admitted into evidence as City composite exhibit 1. Ms. Erlick said the building was set for demolition in May and promised to keep the property up until demolition. She requested an extension until after the demolition date.

Ms. Ursula Thime, Community Inspections Officer, explained that as soon as the demolition permit was issued the property was considered a construction site and would therefore be complied. She noted that the building was kept in good condition and one of the two Sections was already complied.

Ms. Tell granted an extension to the June 1, 2006 hearing.

Reference CE05090450

Parasram Bitna & Kimmy Brereton
2520 Northwest 19th Street

Sec. 18-27(a): Trash on property;
Sec. 47-34.1 A.1: Permitted uses: vehicle storage

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 14, 2005.

Ms. Cheryl Pingitore, Community Inspections Officer, testified that several vehicles were stored on the property: a blue Mazda, a blue Toyota, a red Honda, a white panel truck, a brown Chevy van and a tow truck. Section 18-27(a) was complied. Inspector Pingitore had spoken with the owner yesterday to explain that the property could not be used for storage. She presented photos of the property and copies of the special Magistrate notice and a history of the property, that were admitted into evidence as City composite exhibit 1, and recommended ordering compliance with Section 47-34.1 A.1 within 7 days or a fine of \$100 per day or the vehicles would be towed.

Mr. Parasram Bitna, owner, said the property had already been cleared of vehicles.

Ms. Tell found in favor of the City and ordered compliance with Section 47-34.1.A.1 within 7 days or a fine of \$100 per day would be imposed or the vehicles would be towed.

The next 3 cases were called together:

Reference CE05051549

Suntrax Corp
1950 Northwest 9th Avenue

Sec. 18-27(a): Trash and overgrowth on property;
Sec. 9-306: Peeling paint/stained surfaces;
Sec. 47-20.13 A: Driveway in disrepair

Mr. Andre Cross, Community Inspections Officer, testified that there was rubbish and overgrowth on the property; there were areas of dirty and peeling paint on the building and the parking area was in disrepair. He presented photos of the property to Ms. Tell.

Ms. Hadiga Haider, owner, said she had been overseas when the violations took place, but intended to speak with Inspector Cross about the violations and what must be done to comply. She requested time to comply.

There was confusion and disagreement between Ms. Haider, Inspector Cross and Supervisor Haskins regarding the sandy lot/parking area violations for all three properties and Supervisor Haskins agreed to comply each property's parking area violation and to look into citing the lot on its own if it was being used for parking.

Ms. Tell found in favor of the City and ordered compliance with Section 18-27(a) within 15 days or a fine of \$50 per day would be imposed and with Section 9-306 within 60 days or a fine of \$50 per day would be imposed.

Reference CE05051551

Suntrax Corp.
1952 Northwest 9th Avenue

Sec. 18-27(a): Trash and overgrowth on property;
Sec. 9-306: Peeling paint/stained surfaces;
Sec. 47-20.13 A: Driveway in disrepair

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 17, 2005.

Ms. Tell found in favor of the City and ordered compliance with Section 18-27(a) within 15 days or a fine of \$50 per day would be imposed and with Section 9-306 within 60 days or a fine of \$50 per day would be imposed.

Reference CE05051554

Suntrax Corp.
1954 Northwest 9th Avenue

Sec. 18-27(a): Trash and overgrowth on property;
Sec. 9-306: Peeling paint/stained surfaces;

Sec. 47-20.13 A: Driveway in disrepair

Ms. Bazer announced that service was via the appearance of the owner at this hearing.

Ms. Tell found in favor of the City and ordered compliance with Section 18-27(a) within 15 days or a fine of \$50 per day would be imposed and with Section 9-306 within 60 days or a fine of \$50 per day would be imposed.

Reference CE05071126

Adriana Villalba
1046 Northwest 3rd Avenue

Sec. 18-27(a): Trash on property

Ms. Bazer announced that service was via the appearance of the owner at this hearing.

Ms. Ursula Thime, Community Inspections Officer, testified that there was a mound of dirt on the south side of the property, which was killing the living ground cover underneath. She presented photos of the property and a copy of the case history and recommended ordering compliance within 45 days or a fine of \$25 per day.

Mr. Luis LaLier, the owner's friend, explained that he took care of the property. He presented a letter from the owner authorizing him to represent her at this hearing that was admitted into evidence as respondent's exhibit 1. He requested 30 days to comply.

Ms. Tell found in favor of the City and ordered compliance within 45 days or a fine of \$25 per day would be imposed.

Reference CE05051713

Charles Ralston
1350 Southwest 36th Avenue

Sec. 9-306: Structurally unsound wall

Ms. Bazer announced that service was via the appearance of the owner at this hearing.

Mr. Robert Urow, Community Inspections Officer, testified that the front CBS wall was structurally unsound and secured with plywood. Inspector Urow presented photos of the property that were admitted into evidence as City exhibit 1.

Mr. Charles Ralston, owner, requested 3 months to replace the wall. He had already obtained the permits. Inspector Urow said he had no objection to allowing 90 days.

Ms. Tell found in favor of the City and ordered compliance within 90 days or a fine of \$50 per day would be imposed.

Reference CE05020766

Gy-Rich Inc.
301 West Sunrise Boulevard

Hearing to Impose Fine

Ms. Bazer announced that this case was first heard on May 5, 2005 with compliance ordered by June 4, 2005. One of the original six violations was still not complied and fines had accrued in the amount of \$8,700.

Mr. Girard Richardson, owner, said he had just received the plans from the architect and requested another 60 days to comply.

Mr. Andre Cross, Community Inspections Officer, remarked that Mr. Richardson had “really tried” to comply and said he had no objection to allowing another 60 days.

Ms. Tell granted a 60-day extension.

Reference CE05090235

David Damereau
1241 Middle River Drive

Sec. 18-1: Stagnant pool water

Ms. Bazer announced that certified mail addressed to the registered agent was accepted on September 26, 2005.

Mr. Leonard Ackley, Community Inspections Officer, stated this was a repeat violation and even though the violation was complied, the case was presented to the Special Magistrate. The repeat nature of the case also allowed for a fine of up to \$500 per day. Inspector Ackley testified that the notice was accepted by the registered agent on September 26, 2005 and the property was complied on October 3, 2005 and asked that a fine of \$100 per day be imposed for the time the property was not complied. Inspector Ackley presented a history of the case at 1717 Middle River Drive and a copy of the previous order to Ms. Tell.

Mr. Jim Brady, owner's the attorney, testified that the two violations were cited under different addresses. Ms. Tell stated there was no case law on this issue as yet. She noted that the City was asking her “to use the language of 162 to impose a repeat violation on the basis that it is the violation that has repeated and that's what the statute is directed to, and not the particular piece of property.” She noted that from the perspective of the property owner, “the argument is, how can it be a repeat violation if it's not repeating on the same property and that this provision of the law should only be applicable to the same property having a repeat violation on the same piece of property.”

Ms. Tell felt “the bottom line is, if one looks at the language of 162, how does one read 162?” Mr. Brady felt the question was, “how does one read the charging instrument? The charging instrument says there is a repeat violation at 1241 Middle River Drive; it doesn't say anything about 1717. And the charging instrument says that the repeat violation is a

failure to follow the prior order, and the question, then, the proof, is whether or not the prior order has been followed, not what happened eight blocks away or twenty miles away.”

Inspector Ackley countered that in 162, it stated under “repeat violation”: “notwithstanding the violations occur at different locations.” He noted that even though two different properties were cited, they were under the control of the same contractor.

Ms. Tell then considered whether the notice was defective, as Mr. Brady had indicated. The Assistant City Attorney stated that the difference with a repeat violation was that the statute allowed the City to serve a Notice of Violation without a prior “courtesy notice.” In this case, the City had, in fact, served the courtesy notice on September 6 to the property owner, giving two days to correct the violation. Following that, the City served the Notice of Violation of September 26. Inspector Ackley clarified that the City had re-served the Notice of Violation of October 11 with an amended “to wit” describing the problem.

Mr. Brady assured Ms. Tell that the pump was always running and the water was always treated with chlorine. For a brief period, after the hurricane, the pump was turned off.

Ms. Tell felt that the issue here was whether or not there were 6 days of non-compliance for which she should impose the fine. She also wondered if service was proper. Mr. Brady said they were not contesting service at 1241 Middle River Drive.

Mr. Brady suggested that the City’s motivation for charging his client was retaliatory and should be considered. Ms. Tell stated she had “never really gotten into subjective things like motivation...it seems to me either we do have a violation or we don’t have a violation.”

The Assistant City Attorney suggested that the City withdraw its attempt to enforce this as a repeat violation but requested that Ms. Tell find that the violation did exist for some time. Ms. Tell stated that the City must be sure in the future that the charging instrument was very clear and that if a repeat violation referred to a different property, then that should be indicated on the notice. Ms. Tell then wanted to address the City’s request to find that the violation existed for some time. Mr. Brady felt this was unnecessary, since the notice indicated that if the violation was corrected by October 20, the owner need not appear. By the City’s own testimony, any issues were resolved by October 6. Ms. Tell then asked for evidence of the situation.

Inspector Ackley testified that he cited the property on September 6. He presented photos of the property to Ms. Tell that were admitted into evidence as City composite exhibit 1. Ms. Tell stated, “ I think we can certainly agree, looking at the photos, that there is cause for concern as to the health condition on the property on the sixth of September.” Mr. Brady stated, “No Ma’am, we cannot agree to that at all.” Mr. Brady felt that after hearing the evidence, Ms. Tell would conclude there was no violation.

Ms. Deborah Haskins, Community Inspections Supervisor, requested that the City be allowed to call its environmental inspector, Troy Balint, to testify. Inspector Ackley informed

Ms. Tell that the water in the pool contained tadpoles and tree debris and construction site garbage that were difficult to see in the photo. He noted that insects could inhabit the pool with the tadpoles.

Mr. Brady asked Inspector Ackley about his educational background. Inspector Ackley explained that he had a BS in physical education and levels 1,2 and 3 in code inspection. He had also worked for the Department of Agriculture and was therefore aware of what constituted stagnant water. Mr. Brady read a dictionary definition of the word "stagnant." He then asked Inspector Ackley about the water movement and level changes in the pool and how these might correspond to the tidal movements of the Middle River. Inspector Ackley stated he had never tested the water for mosquito larvae, but had inferred their presence because dragonflies were feeding from the water's surface. This was considered an indicator of mosquito larvae presence. Inspector Ackley noted that his citation included the term "insects" and he did note the presence of other insects in the pool.

Inspector Ackley referred to language in 18-1 stating, "if it reasonably could become infested" this was also part of the violation.

Inspector Ackley confirmed that this was a construction site with a fence closing off the pool area. Mr. Brady moved to limit consideration to the two specifics of the to wit: the treatment and circulation of the water in the pool, not the debris in the pool. The Assistant City Attorney noted that debris would prevent the water from circulating properly through a filter system and the circulation referred to in the notice did not mean circulating through a hole in the bottom of the pool. Mr. Brady noted that construction was taking place on the pool and it could therefore not be hooked up to a filtration system. Ms. Tell confirmed that Inspector Ackley had complied the pool when the trash was still present and noted that therefore the City could not now include the trash removal in the violation. Inspector Ackley stated his main concern had been the potential insect infestation, not the debris problem. Ms. Tell granted Mr. Brady's motion to limit her consideration.

Supervisor Haskins stated that Mr. Balint, the City's environmental inspector, had been present for the October 3 inspection along with Supervisor Haskins, another Code Enforcement supervisor and the construction site superintendent. Mr. Balint had recommended the corrective action.

Mr. Troy Balint, Environmental Inspector, testified that he had visited the property on October 3. During his visit, the pool was being drained with a sump pump and the site superintendent explained that the previous pump had burned out over the weekend. Mr. Balint advised the superintendent to keep the pool empty of water. Mr. Balint said he did not find a mosquito infestation on his visit, but there was a "potential environment" prior to the water being removed.

Mr. Balint explained his education and credentials to Mr. Brady and explained that since the pump was running by the time he arrived, the chance for mosquito infestation was removed.

Mr. Balint explained to Mr. Brady that the source of water to the pool was ground water, not the river, as Mr. Brady had asserted. The tidal action would have an effect, but not a direct correlation on the water level, as the river did not feed the pool. He also explained that a rising and falling water level could still be stagnant, as "stagnant" referred to the surface of the water. Mr. Balint confirmed that he had recommended the use of the pump and against further chlorination.

Mr. Brady moved for an order of discharge, as he felt that the City failed to make its case and the respondent had complied by the October 20 date on the Notice of Violation.

The Assistant City Attorney conceded that compliance was made by October 3 and asked Ms. Tell to rule. Ms. Tell restated her concern for health and safety issue cases but noted that compliance was made by the date set for corrective action and she therefore would dismiss the case.

Mr. David Damereau, owner, said he took environmental issues seriously, but felt that the problem arose because he and Inspector Ackley had "had words and raised some animosity." He stated he would have addressed any issue that arose if he felt it was a problem. Mr. Damereau presented his own photos of the pool to the Assistant City Attorney and said this was how the pool looked "ninety-nine point nine percent of the time." The Assistant City Attorney objected to the photos as irrelevant and they were not admitted into evidence.

Ms. Tell dismissed the case.

Reference CE05030779

William Beamer
700 Northeast 20th Avenue

Sec. 9-304(b): Maintenance of parking area

Ms. Bazer announced that Inspector Thime had a stipulated agreement with the owner to comply.

Ms. Ursula Thime, Community Inspections Officer, testified that the parking area was in disrepair and she had a signed stipulated agreement with the owner to comply the property within 90 days or a fine of \$25 per day. She presented the agreement, the case history and a copy of the Notice of violation to Ms. Tell.

Ms. Tell found in favor of the City and ordered compliance within 90 days or a fine of \$25 per day would be imposed.

Reference CE05091250

101 Coconut Investments LLC
101 Southwest Coconut Drive

Sec. 47-21.12 A.1: Improper tree removal

Ms. Bazer announced that certified mail addressed to an officer of the company was accepted on September 30, 2005.

Mr. Karl Lauridsen, Community Landscape Officer, testified that trees were removed from the site without a permit. He presented photos of the property and recommended ordering compliance via an after the fact permit and replacement of the trees within 20 days or a fine of \$50 per day. He noted that the permit had already been issued but had not yet been picked up.

Ms. Tell found in favor of the City and ordered compliance within 20 days or a fine of \$50 per day would be imposed

Reference CE05070151

Jane Gangemi
3151 Northwest 66th Street

Sec. 9-278(g): Missing/torn screens;
Sec. 9-281(b): Rubbish and trash on property;
Sec. 9-306: Peeling paint/stained surfaces;
Sec. 9-308 (b): Roof in disrepair

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 24, 2005.

Mr. Gilbert Lopez, Community Inspections Officer, testified that there were windows in the building with torn or missing screens and the screened patio was in disrepair; Sections 9-281(b) and 9-308(b) were complied. Inspector Lopez presented photos of the property and recommended ordering compliance with Sections 9-278(g) and 9-306 within 45 days or a fine of \$25 per day, per violation.

Ms. Tell found in favor of the City and ordered compliance with Sections 9-278(g) and 9-306 within 45 days or a fine of \$25 per day, per violation would be imposed.

Reference CE05080199

R. Rickel Trust and Helen Rickel &
Northridge Properties LLC
2051 North Federal Highway

Sec. 24-28(a): Dumpster lids not kept closed;
Sec. 24-7(b): Trash in dumpster enclosure;
Sec. 47-19.4 D.4: Open dumpster enclosure gates

Ms. Bazer announced that certified mail addressed to the owner and registered agent had been accepted [no date on card] and certified mail addressed to the property manager had been accepted on October 4, 2005.

Mr. Leonard Ackley, Community Inspections Officer, testified that the dumpster lids and gates were not kept closed; section 24-7(b) was complied. Inspector Ackley presented photos of the property and a copy of the Notice of Violation and recommended ordering

compliance with Sections 24-28(a) and 47-19.4 D.4 within 10 days or a fine of \$100 per day, per violation.

Ms. Tell found in favor of the City and ordered compliance with Sections 24-28(a) and 47-19.4 D.4 within 10 days or a fine of \$100 per day, per violation would be imposed.

Reference CE05090714

Dan Davies Properties Inc.
2011 Northeast 17th Street

Sec. 18-27(a): Trash on property

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 24, 2005.

Mr. Leonard Ackley, Community Inspections Officer, testified there was trash and debris on the property. He presented photos of the property, a copy of the case history and Notice of Violation that were admitted into evidence as City composite exhibit 1 and recommended ordering compliance within 7 days or a fine of \$50 per day.

Ms. Tell found in favor of the City and ordered compliance within 7 days or a fine of \$50 per day would be imposed.

Reference CE05031674

Jammie Oglesby
1405 Northwest 12th Street

Sec. 18-27(a): Trash and overgrowth on property;
Sec. 47-21.8: Missing ground cover

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 30, 2005 and service was via posting at the property on September 29, 2005 and at City Hall on October 5, 2005.

Ms. Cheryl Pingitore, Community Inspections Officer, testified that there were areas of dead or missing ground cover on the property; Section 18-27(a) was complied. She presented photos of the property and a copy of the property history and Notice of Violation and said she had spoken with the owner earlier and agreed to recommend ordering compliance with Section 47-21.8 within 30 days or a fine of \$25 per day.

Ms. Tell found in favor of the City and ordered compliance with Section 47-21.8 within 30 days or a fine of \$25 per day would be imposed.

Reference CE05090605

Garry Smyth & Jonathan Kirn
813 Southwest 14th Avenue

NFPA 10 6.3.1: Fire extinguisher maintenance

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 23, 2005.

Mr. Thomas Clements, Fire Inspector, testified that the fire extinguishers had not been serviced and tagged by a licensed company within the past twelve months. He said he had spoken with the owner and agreed to recommend ordering compliance within 14 days or a fine of \$100 per day.

Ms. Tell found in favor of the City and ordered compliance within 14 days or a fine of \$100 per day would be imposed.

Reference CE05090492

Paul Scholar
629 Northeast 15th Avenue

NFPA 10 6.3.1: Fire extinguisher maintenance;
NFPA 1 1.7.6: Storage in meter room

Ms. Bazer announced that certified mail addressed to the owner was accepted on September 24, 2005.

Mr. Thomas Clements, Fire Inspector, testified that the fire extinguishers had not had its annual certification; Section 1 1.7.6 was complied. He recommended ordering compliance with Section 10 6.3.1 within 14 days or a fine of \$100 per day.

Ms. Tell found in favor of the City and ordered compliance with Section 10 6.3.1 within 14 days or a fine of \$100 per day would be imposed.

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:

CE05060071	CE05010848	CE05081332	CE05050892
CE05070242	CE05081325	CE05081852	CE05081856
CE05080077	CE05080082	CE05080819	CE05081436
CE05090098	CE05090170	CE04110903	CE05080699
CE05081078	CE05081081	CE05081438	CE05060123
CE05071218	CE05080178	CE05080262	CE05080690
CE05081417	CE05081522	CE05081568	CE05081785
CE05091227	CE05030312	CE05090552	CE05090589
CE05090601	CE05090602	CE05090530	CE05090603
CE05090606	CE05090942	CE05090943	CE05090485
CE05090486	CE05090488	CE05090489	CE05090494
CE05090497	CE05090498	CE05090501	CE05090946
CE05090949	CE05090950	CE05090951	CE05090953

CE05090960
CE05081910

CE05090962
CE05090609

CE05090964

CE05090966

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:

CE05060673
CE05051419
CE05081662
CE05090613

CE05071297
CE05051420
CE05081699

CE05071584
CE05081341
CE05071348

CE05051418
CE05081309
CE05090537

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:

CE05060555

CE05081322

CE04121227

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:

CE05080180

Approved for Claim of Lien

Ms. Bazer presented Ms. Tell with the following cases to sign the order to impose the fine, which Ms. Tell signed based on the affidavits of the inspectors

CE04120886 - \$ 3,825
CE05021485 - \$ 9,025

CE05060674 - \$ 2,700

CE05050629 - \$ 775

There being no further business, the hearing was adjourned at 11:48 a.m.

Special Magistrate

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ATTEST:

Clerk, Special Magistrate