

**SPECIAL MAGISTRATE HEARING
City Commission Meeting Room
Judge Floyd Hull Presiding
December 17, 2007
11:30 A.M. –12:16 P.M.**

Staff Present:

Brian McKelligett, Clerk of Special Magistrate Supervisor
Diana Cahill, Secretary, WaterWorks 2011 Special Magistrate
Assistant City Attorney
Peggy Burks, Code Enforcement Supervisor
Leonard Ackley, Code Enforcement Officer

Also Present:

CE07090278: James Benjamin, attorney

NOTE: All individuals who presented information to the Special Magistrate during these proceedings were sworn in.

The meeting was called to order at 11:34 A.M.

Case: CE07090278

Rescheduled from 11/1/07

DI-MI Investments Corp.
1135 South Federal Highway

Mr. McKelligett announced that certified mail sent to the owner was accepted on 11/8/07 and certified mail sent to the registered agent was accepted on 11/8/07.

Violation:

47-18.2.d.2.

THIS PROPERTY OPERATES AS A SEXUALLY ORIENTED RETAIL
ESTABLISHMENT AND IS WITHIN 500 FEET OF A CHURCH AND AN RS8
RESIDENTIAL NEIGHBORHOOD.

Ms. Ginger Wald, Assistant City Attorney, stated they had agreed that there was display of sexually oriented material at the establishment, satisfying the City's first burden of proof that this was a "sexually oriented retail establishment." Ms. Wald explained that there were specific exceptions to this Section, i.e.:

- ❖ The gross income for sale or rental of the adult material comprised less than 40% of the gross income at the establishment, and
- ❖ The sexually oriented items comprised less than 30% of the items displayed to customers as stock and were not accessible to minors, and
- ❖ No more than 1/3 of the net floor area for stock contained sexually oriented material and these were not accessible to minors, and

- ❖ No more than 1/3 of display area was used to display sexually oriented material and this material was not accessible to minors, and
- ❖ No more than 20% of the inventory or display were sexual devices, and
- ❖ The non-sexually oriented materials were displayed with at least the same prominence and ease of accessibility by the public as the sexually oriented items, and
- ❖ No video or pictorial representations of specified anatomical areas or specified sexual activity were displayed in areas accessible to minors.

Ms. Wald explained that demonstration of the above exceptions was accomplished by affidavit from the owner of the property or principal of the business attesting to the number of items, gross income and floor area of the establishment.

Ms. Wald informed Judge Hull the City had received and accepted an affidavit in support of the exception executed by Yagir Alam, president of the business. Mr. James Benjamin, attorney, confirmed that they had complied with the requirements for the exception. He stated this was a mixed-use store, and was below all of the ordinance thresholds. Ms. Wald agreed that the submission of the affidavit satisfied the exceptions. She presented the Code Enforcement case file and photos to Judge Hull for the record.

Mr. Benjamin explained that he had included a clarification of the sub-definition of "total shelf area" for their affidavit. He stated this term was "kind of vague" in the ordinance. Ms. Wald reiterated that the City had accepted Mr. Benjamin's clarification.

Mr. Len Ackley, Code Enforcement Officer, testified that the photos submitted were taken in August, October and December 2007.

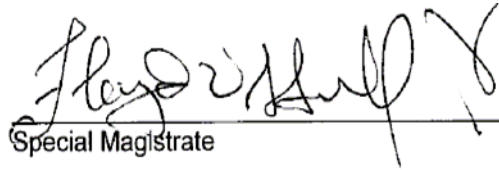
Ms. Wald advised Judge Hull that pursuant to the confines of the code, he should accept the contents of the sworn affidavit as factually correct.

Judge Hull asked Ms. Wald if the City would stipulate that his acceptance of the stipulation as satisfying the exception to the ordinance would be in conformance with the intent of the City Commission. Ms. Wald stated Judge Hull's acceptance would be in compliance with the ordinance, and she could not answer his question regarding the Commission. Mr. Benjamin reminded Judge Hull that the City Commission had no jurisdiction over the matter before the Special Magistrate.

Mr. Benjamin explained to Judge Hull that they were seeking his dismissal of the allegation that this was an adult business, based upon the affidavit Mr. Benjamin submitted. Ms. Wald explained that the City had instituted this hearing so there would be a record of the case, even though they were stipulating to the affidavit.

Ms. Wald announced that the City was dismissing the case, based upon the affidavit provided by the respondent.

There being no further business, the hearing was adjourned at 12:16 p.m.


Special Magistrate

ATTEST:


Clerk, Special Magistrate

Minutes prepared by: Jamie Opperee, Prototype Services