

SPECIAL MAGISTRATE HEARING

MINUTES

JANUARY 10, 2012

10:00 a.m.

CALL TO ORDER

PRESENT

Herbert E. Langford, Jr., Special Magistrate
Heidi Hartsock, Code Enforcement Officer
Pamala Prell, Deputy City Clerk

1. CASES

- a. Case: #20110300
Property Owner: Evodia LLC
Business Owner: Ronay, Alan – Best Buddies Dog Boutique & Bakery
Violation Address: 6498 Gulf Blvd., St. Pete Beach, FL 33706

Violation: Code Section 26.4 Prohibited Signs.
Placement of a cold air inflatable on roof of van

Attorney Langford swore in those persons who wished to testify regarding this case.

Mr. Alan Ronay was in attendance and identified himself as the business owner in the case.

Attorney Langford advised Mr. Ronay that he had three choices today regarding the violation. 1. That he did not commit the offense. 2. That he did commit the offense but has corrected it. 3. That he committed the offense and has begun to correct it but needs more time.

Mr. Ronay stated that he did not commit the offense.

Attorney Langford asked Mr. Ronay if he had an opportunity to review the opening remarks that was included on the agenda. Mr. Ronay stated that he did read those remarks.

Attorney Langford gave a brief summary of the hearing procedures.

Code Enforcement Officer Heidi Hartsock provided Mr. Ronay and Attorney Langford with Exhibit A as evidence. Ms. Hartsock testified that Exhibit A includes two notices of the hearing because the first notice contained some errors which were corrected and a second notice was sent to the property owner and business owner. Ms. Hartsock further testified that Exhibit A includes the Affidavit of Service; the Notice of Violation, dated December 1, 2011, for having a portable inflatable sign which granted the business owner one day to bring the property into compliance; the tax collectors ownership information; the deed to the property; the business tax receipt; an aerial photo of property; and photos from inspections on December 7, 2011, December 23, 2011, and December 29, 2011 showing the portable sign in violation. Ms. Hartsock presented Exhibit B which was a photo taken on January 9, 2012 showing that the portable sign was removed.

Upon inquiry by Attorney Langford, Mr. Ronay stated that he had a copy of Exhibit B.

Attorney Langford pointed out that he has a copy of Section 26-2 definitions of signs and asked if Mr. Ronay also had a copy of that. Mr. Ronay stated that he did have a copy of the definitions.

Attorney Langford asked Mr. Ronay if he had any objections to entering Exhibit A and B into the testimony. Mr. Ronay stated that he did not object.

Mr. Alan Ronay, business owner, was given the opportunity to cross-examine Ms. Hartsock. Mr. Ronay asked Ms. Hartsock if there were any other businesses with similar decorations given violations for the sign ordinance. Ms. Hartsock replied no.

Mr. Ronay asked Ms. Hartsock if she would give the definition of a sign. Ms. Hartsock read the following definition of a portable sign "is any sign and or poster that is not permanently attached to the ground or structure. For purposes of this division a cold air inflatable sign shall be considered to be a portable sign".

Mr. Ronay asked Ms. Hartsock if any other cold air inflatable signs were held in violation between November 15, 2011 and January 7, 2012. Ms. Hartsock replied that she was not aware of any.

Mr. Ronay asked Ms. Hartsock if she was aware of any other cold air inflatable decorations in the City. Ms. Hartsock stated that she was aware of other holiday inflatable ornaments in the City. Mr. Ronay asked Ms. Hartsock if the other inflatable decorations were allowed. Ms. Hartsock

stated that the ones she has seen that are holiday decorations are allowed.

Mr. Ronay asked if she inspected his holiday decorations to see if it was attached to the vehicle. Ms. Hartsock replied that his inflatable sign was affixed to the top of a van and plugged into the side wall of the building.

Mr. Ronay asked if she inspected to see how it was attached to the van. Ms. Hartsock replied that she did not.

Mr. Ronay had no further questions for Ms. Hartsock.

Attorney Langford asked if the City has any other witnesses. Ms. Hartsock replied that the City has no other witnesses.

Attorney Langford asked Mr. Ronay to present his defense. Mr. Ronay provided a copy of the sign ordinance to Attorney Langford. Ms. Hartsock stated that she had a copy of it.

Mr. Ronay read the following definition of a portable sign "a portable sign means any sign or poster that is not attached permanently to the ground or structure. For purposes of this division a cold air inflatable sign shall be considered to be a portable sign".

Mr. Ronay testified that his decoration is a Christmas decoration, it says Merry Christmas on it, it does not say his business name, it does not advertise a product, and it does not advertise a sale or promotion and is simply a Christmas decoration. Mr. Ronay testified that it is a decoration purchased in a hardware store in the Christmas decoration section where they sell Christmas trees, lights, and ornaments. Mr. Ronay testified that it was permanently attached to the vehicle on a piece of plywood and that he drove the van in the City's holiday parade with the decoration on top. Mr. Ronay testified that he removed the decoration on December 31, 2011.

Mr. Ronay further testified that he does not believe that the decoration falls under the portable sign category but falls under the holiday and seasonal decoration category. Mr. Ronay read the following definition of a holiday sign "holiday and seasonal decorations means decorations that pertain to legal or otherwise recognized holidays or seasons of the year". Mr. Ronay stated that it was in fact a Christmas decoration that says Merry Christmas and has a Santa and red bow on it. Mr. Ronay referenced Section 26.6 exemptions by reading the following "a sign on a vehicle other than a prohibited vehicle or signs". He stated that he felt it was exempt under Section 26.6(b).

Mr. Ronay read the following from Section 26.25 – All Districts, “During the period of November 15th to January 7th of each year, each business holding a valid business tax receipt shall be allowed to display one additional sign of the types allowed for the applicable zoning district, excluding free standing pole signs, monument signs and such signs shall not require a permit but must conform to the conventional requirements of the code”. Mr. Ronay testified that he holds a business tax receipt and the decoration was up between the times of November 15th thru January 7th, and that it is not a free standing pole sign or monument sign. Mr. Ronay read from the code “temporary holiday and seasonal decoration shall be allowed in all districts”.

Mr. Ronay displayed the decoration and explained that it was an inflatable dog with a Santa hat and red bow that says Merry Christmas on it. He pointed out that it does not advertise his business, a sale or a product.

Attorney Langford asked if the photos that were presented represented the decoration being displayed and if it was a cold air inflatable. Mr. Ronay responded that was correct.

Mr. Ronay submitted three photos of other inflatable holiday decorations that he observed in the City to Ms. Hartsock and Attorney Langford as evidence. Attorney Langford asked Ms. Hartsock if she had any objections to them being entered into evidence. Ms. Hartsock replied that she did not object. Attorney Langford labeled these as respondent's Composite No. 1, 2, and 3. Attorney Langford reviewed the photos that were submitted.

Mr. Ronay testified that all three photos were taken in St. Pete Beach and none of them were cited for violations. Mr. Ronay stated that there was no difference in these decorations and his decoration and he felt that it was unfair and discriminatory enforcement of the law, if in fact they are in violation. Mr. Ronay stated that Ms. Hartsock testified that she was aware of the other inflatable decorations and they were not given a citation.

Attorney Langford summarized that what he heard from Mr. Ronay was that he did have the inflatable, but that it was exempt under the code provision. Mr. Ronay agreed to that statement.

Ms. Hartsock pointed out that Mr. Ronay was cited under Section 26.4 for a prohibited sign and read the following definition of a sign “any device, fixture, placard or structure which uses color, form, graphic, illumination, architectural style or design with text or writing to advertise, attract attention, announce the purpose of or identify the purpose of any person

or entity or to communicate information of any kind to the public. The term sign includes sign structure". Ms. Hartsock testified that under the portable sign definition a cold air inflatable is a portable sign and is prohibited in St. Pete Beach. Ms. Hartsock read the definition of a vehicle sign into the record and stated that the vehicle was never moved.

Attorney Langford summarized the testimony given by both parties.

Mr. Ronay stated that he did not feel that the decoration was governed by the vehicle sign regulations and that the vehicle was moved. Mr. Ronay pointed out that Ms. Hartsock testified that she did not issue any other citations for other cold air inflatable signs in the City and that he did not understand why he was cited and others were not which was selective enforcement. Mr. Ronay pointed out that last year he had the same decoration on his vehicle and he was not cited. He pointed out that the Mayor recently granted him a "so called pardon" for the decoration.

Attorney Langford directed Mr. Ronay to request any desirable changes to the ordinance to the City Commission.

Mr. Ronay asked Attorney Langford to rule in his favor.

Attorney Langford ruled that the finding is that the violation did occur and Mr. Ronay did cause the violation.

Attorney Langford advised Mr. Ronay that he had 30 days to appeal the decision.

Ms. Hartsock requested that Attorney Langford find that the violation did exist; the violation has been corrected and impose a \$150.00 administrative fee.

Attorney Langford informed Mr. Ronay that because a violation did occur if there is a repeat violation within five years he could face fines up to \$500.00 per day.

Mr. Ronay stated that he disagrees with the finding and the \$150.00 administrative fee.

Attorney Langford further ruled that there is a violation and set a repeat violation, if necessary, and imposed a \$150.00 administrative fee.

Mr. Ronay requested a verbatim transcript of the hearing. Attorney Langford advised him to contact the City Clerk.

Attorney Langford recessed the hearing at 10:56 a.m. and the hearing was reconvened at 11:08 a.m.

b. Case: #20110129
Property Owner: Simonaitis, Gina
Violation Address: 8920 Gulf Blvd., St. Pete Beach, FL 33706

Violation: Section 98-66 (b)(20) Grass and weeds.
The property has untended growth of
vegetation matter i.e.: grass and weeds.

Ms. Hartsock testified that this property was heard by Special Magistrate Elias on December 13, 2011 and was found to be in violation. Mr. Elias granted the property owner seven days (December 27, 2011) to bring the property into compliance. She testified that an inspection on December 29, 2011 showed that the property was mowed, but the debris was not removed and an inspection on January 9, 2012 showed that the debris has been removed and the property is in compliance. Ms. Hartsock provided the order and photos of the property to Attorney Langford.

There was no one present to represent this case.

Attorney Langford ruled that the fines would be imposed for 14 days at \$250.00 per day which is \$3,500 and a \$150.00 administrative fee.

c. Case: #20110148
Property Owner: Geiger, Drew Holly
Violation Address: 4336 Belle Vista Dr., St. Pete Beach, FL
33706

Violation: Section 98-66(b) (20) Grass and weeds.
The property has untended growth of
vegetative matter i.e.: grass and
weeds.

Ms. Hartsock testified that this case came before Special Magistrate Elias on December 13, 2011 and he found the property in violation for overgrown grass and weeds and granted the property owner seven days to bring the property into compliance. She testified that upon a re-inspection on December 29, 2011 and January 9, 2012 the property was not mowed. She provided Attorney Langford with a copy of the order and a photo of the property on January 9, 2012. Ms. Hartsock stated that the owner called her prior to this hearing and advised that he was admitted to

the hospital after the December hearing and was currently working on the property to bring it into compliance.

There was no one present to represent this case.

Attorney Langford ruled that the property is not in compliance and he imposed a \$250.00 fine per day beginning December 27, 2011 until the property is in compliance. He advised that the owner can file a motion to request a reduction of fines for being hospitalized during the process. He also assessed a \$150.00 administrative fee.

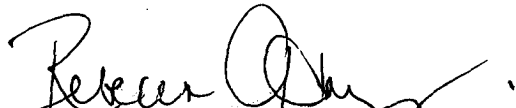
2. OTHER DISCUSSION

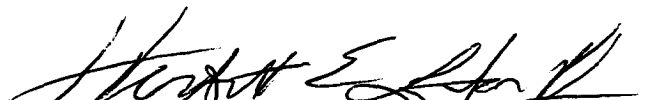
There was no other discussion

3. ADJOURNMENT

There being no further business to come before the Magistrate, the hearing was adjourned at 11:15 a.m.

Attest:


Rebecca C. Haynes, City Clerk


Herbert E. Langford, Jr., Special Magistrate

Minutes approved on: 2/14/2012