

4-21-15
m-1

Jonda Joseph

From: Jonda Joseph
Sent: Monday, April 20, 2015 4:51 PM
To: Bruce G. Roberts; Cynthia Everett
Subject: RE: 704 N.E. 20th Ave, Fort Lauderdale

Information
Provided by
Brady Cobb

ok

From: Bruce G. Roberts
Sent: Monday, April 20, 2015 4:21 PM
To: Jonda Joseph; Cynthia Everett
Subject: FW: 704 N.E. 20th Ave, Fort Lauderdale

Cynthia.....FYI

Jonda....for the record

Bruce G. Roberts
Commissioner - District 1
City of Fort Lauderdale
Fort Lauderdale, FL 33301 USA
954-828-5033
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CITY OF FORT LAUDERDALE

From: Brady Cobb [<mailto:bcobb@CobbEddy.com>]
Sent: Monday, April 20, 2015 4:01 PM
To: Bruce G. Roberts
Subject: RE: 704 N.E. 20th Ave, Fort Lauderdale

Commissioner Roberts

Attached for your review is a supplemental memorandum of law in support of my client's position. Have a good evening, and see you tomorrow night.

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From: Brady Cobb
Sent: Monday, April 20, 2015 11:08 AM
To: 'Bruce G. Roberts'
Subject: RE: 704 N.E. 20th Ave, Fort Lauderdale

Commissioner Roberts:

I hope all is well for you, and that you had a great weekend.

As you know, the compliance determination for the dock waiver at the property noted above is set for hearing tomorrow night's commission meeting. I know that the property owner's attorney has circulated a letter which contains his argument that the commission does not have jurisdiction to either make a compliance determination, and/or revoke the waiver or impose other penalties. I respectfully disagree with his position, and below is my client's response thereto with case law and citations to the City Code.

I look forward to tomorrow night's hearing. Have a good day.

From: Brady Cobb
Sent: Monday, April 20, 2015 10:41 AM
To: Bob Dunckel (BDunckel@fortlauderdale.gov)
Cc: Lee Feldman; Cynthia Everett
Subject: RE: City Commission Hearing - 704 NE 20th Avenue

Bob:

I hope you had a great weekend. In response to Mr. Coker's argument that the City Commission lacks jurisdiction to revoke the waiver at issue, below is my client's summary of relevant case law and sections of the City's code, all of which unequivocally establish that the Commission not only has jurisdiction to make a compliance determination, but also to revoke the waiver granted to Mr. and Mrs. Benyo due to their willful and flagrant non-compliance with the terms of the waiver and the law.

At the outset it must be noted that the granting of a license (waiver) by a governmental agency is a privilege, and with that privilege comes the responsibility to adhere to the terms of the license and all relevant laws. *Coventry First LLC v. McCarty*, 2009 WL 903277 (N.D. Fla 2009). In the matter at issue, when the Benyo's purchased the property, the zoning classification for the property prohibited the construction of the now existing docks, and the leasing of the docks to third parties inclusive of persons living in the residence other than the owners. Mr. and Mrs. Benyo therefore engaged counsel and sought to obtain the privilege of receiving a waiver of the City's Code and zoning ordinances that would allow them to install the new dock configuration, and to lease the slips to vessels. As the record delineates, the waiver was ultimately approved and contained express conditions that the Benyo's were bound and obligated to strictly comply with. I will not delineate all of their flagrant violations in this email and will instead make a full presentation tomorrow night, inclusive of videos and photographs, but respectfully submit that the Benyo's have violated each and every condition contained within the waiver and have thus forfeited the privilege they were afforded vis a vie the waiver. *Pratt v. The City of Hollywood*, 78 So.2d 697 (Fla. 1955).

To that end, section 2-61(4) of the City's code states that the City Manager shall be responsible to the city commission in regards to ensuring that all terms and conditions imposed in favor of the city or its inhabitants in all contracts are faithfully kept, and upon knowledge of any violation thereof, call the same to the attention of the city attorney and the city commission. In the case at bar, the city manager was notified by my client directly and through my letter dated January 27, 2015 of Mr. and Mrs. Benyo's violations of the terms and conditions of the waiver, and he obligated pursuant to section 2-61 to call the same before the City Commission. As the record delineates, the lion's share of the violations committed by the Benyo's pertain to unlawful refitting of yachts at the property, including major exterior alterations, rebuilding, refinishing and the removal of machinery, and such conduct expressly violates the plain language of section 8-149 of the City Code (as well as the express language of the waiver). Pursuant to section 8-137, any violations of section 8 of the code (including section 8-149) shall be punished according to the provisions of section 1-6 of the Code. Under section 1-6, "violation of this Code" is defined to mean (a) doing an act that is prohibited by ordinance, and the Benyo's failure to comply with the terms of the waiver and/or section 8-149 constitutes a violation of the Code. Under section 1-6(c), a violation of the code can be punished by certain monetary penalties, imprisonment, and assessment of costs, all of which the Benyo's are subject to receiving for their unlawful conduct. Most importantly however is section 1-6(d), which plainly states "[t]he imposition of a penalty does **not prevent revocation or suspension of a license, permit or franchise** or the imposition of civil fines, civil penalties or administrative sanctions. Thus, a simple reading of sections 8-149, 8-137 and 1-6(c) wholly obviates Mr. Coker's arguments that the Commission does not have jurisdiction in this matter, and to the contrary establishes that the City Commission has clear authorization from the Code to review and render a decision as to the Benyo's compliance with the waiver, and to ultimately revoke the waiver.

In regards to revocation of the waiver, attached for your review are some opinions in which a governmental agencies revocation of a license/permit/waiver was upheld as being lawful. As the *Locklear* opinion holds, the revocation of a license is deemed free of punitive criminal intent, and the purpose instead is the protection of the public welfare. In the case at bar, the violations by the Benyo's of the waiver have resulted in substantial environmental damage (which is currently being prosecuted by Broward County and the Florida Department of Environmental Protection), and some 34 neighbors have all signed a petition in support of the revocation of the waiver due the Benyo's actions in building and allowing such a nuisance to exist. The photographs and the videos I will present speak for themselves, and the revocation of this waiver would unquestionably be the definition of protecting the public's welfare.

I acknowledge that this matter is quasi-judicial in nature, and the record denotes that the Benyo's have been provided with the requisite due process of law, and have clearly been zealously represented by counsel. Bottom line, the case law and the provisions of the City's Code clearly establish the jurisdiction of the City Commission, and Mr. Coker's arguments must therefore be disregard in their entirety. Should you have any questions in the interim, please do not hesitate to contact me. I look forward to the hearing tomorrow night, and I hope you have a great day.

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From: Bruce G. Roberts [<mailto:BRoberts@fortlauderdale.gov>]
Sent: Thursday, February 26, 2015 4:12 PM
To: Brady Cobb
Cc: Robbi Uptegrove
Subject: FW: 704 N.E. 20th Ave, Fort Lauderdale

Brady,
Congratulations on your new venture!

I certainly would like to meet with you to discuss this issue. Earlier this week, I met with the current owner of the property and would appreciate the complete story. My Assistant, Robbi, will be calling to schedule the meeting for next week.

Bruce

Bruce G. Roberts
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From: Brady Cobb [mailto:]
Sent: Wednesday, February 25, 2015 9:44 AM
To: Bruce G. Roberts
Subject: FW: 704 N.E. 20th Ave, Fort Lauderdale

Bruce:

I hope all is well for you! It's been a while, and I don't know if you remember but since I left the budget advisory board, I also amicably left Tripp Scott and started by my own firm. I am still of counsel to Tripp Scott and work with Ed, Jim and Norman on a daily basis, but I am enjoying the freedom that a smaller practice affords.

Do you have a few minutes to meet next week in regards to this address/issue? I represent one of the neighbors, and I submitted the attached letter a few weeks back and have been working with Lee Feldman and staff on this issue, and the matter will either be heard at the March 3, 2015 or the March 17, 2015 Commission meeting.

I would like to come by and get your thoughts on the matter, is there a day/time that is better for you next week? I am registered as a lobbyist per the City's ordinance on this matter. Looking forward to visiting with you.

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M E M O R A N D U M

TO: Bob Dunkel, City Attorney, City of Fort Lauderdale

FROM: Brady Cobb, Esq.

RE: 4/21/15 City Commission Regular Meeting Agenda - Item M-1
Legal Memorandum Supporting Revocation of Permit

DATE: 4/20/15

I represent James and Priscilla Juranitch, residing at 714 NE 20th Ave., Fort Lauderdale, FL 33304, who are next-door neighbors of Shawn and Jennifer Benyo, residing at 704 NE 20th Ave., Ft. Lauderdale, FL 33304, the permit/waiver holders at issue. Pursuant to Resolution number 14-44, which is Exhibit D this agenda item, the Benyo's were granted a dock waiver, and section 2 of the waiver contained ten (10) express conditions that the Benyo's were required to be in compliance with. More specifically, the first condition mandated that the Benyo's were required to comply with all applicable building and zoning regulations as well as any other Federal and State laws, and the sixth (6th) condition expressly references section 8-149 of the code and mandates that the Benyo's were to be in compliance with the provisions of section 8-149 at all times. As noted in my correspondence with City Manager Lee Feldman, Exhibit K to this agenda item, among numerous violations committed by the Benyos (including unlawful live aboards, noise violations, parking violations and other violations of the City's code), major refit work on a 145' luxury yacht occurred while the vessel was in the water and out in the open, docked at the Benyos' property. This activity is in clear contravention of Section 8-149(a) of the City Code and the express language of the waiver per the plain language of section 2(6).

Section 8-149 is found in Chapter 8, Article V, Division 1, of the City Code, comprising Sections 8-136 through 8-156 of the City Code. Section 8-137 of the City Code, entitled "Penalties," provides that "[a]ny person who shall violate, permit to be violated or cause to be violated any provision of this division shall, upon conviction, be punished as provided in section 1-6 of this Code." While Section 1-6(c) provides for monetary penalties and potential criminal sanctions, which this Commission could impose should it make the requisite evidentiary findings, section 1-6(d) clearly delineates that "[t]he imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise or the imposition of civil fines, civil penalties or administrative sanctions." Accordingly, my clients request that this Commission exercise its authority under section 2(6) of the resolution and Sections 8-149, 8-137 and Section 1-6(d) of the City Code to revoke the permit previously issued to the Benyos on account of the egregious violations of the permit.

In a quasi-judicial hearing such as this, the City Commission may revoke a license or permit so long as the proceedings are conducted consistent with due process. The due process required is not the same as that which is required in a judicial hearing, and the rules of evidence and procedure are relaxed. See Seminole Entertainment, Inc. v. City of Casselberry, 811 So.2d 693, 696 (Fla. 5th

DCA 2001). The revocation of a license or permit is generally not deemed punitive, the purpose being the protection of the public welfare. Locklear v. Florida Fish & Wildlife Conservation Commission, 886 So.2d 326, 328-329 (Fla. 5th DCA 2004) (upholding license suspension, where the purpose was to protect state waters from illegal fishing activities); see also Pratt v. City of Hollywood, 78 So.2d 697 (Fla. 1955) (city's police powers to protect the general welfare gave it authority to impose conditions on issuance of license or permit, and to revoke the license or permit when the conditions were violated).

Since the proceedings do not concern revocation of a professional license, the standard of proof applicable is the preponderance of the evidence standard. See Department of Environmental Protection v. South Palafox Properties, Inc., 2015 WL 999274 at **13-14, ¶¶ 71-73, Case No. 14-3674 (Fla. Div. Admin. Hearings, Recommended Order, Mar. 2, 2015) (construction and demolition debris disposal facility permit from DEP was not a professional license); Lamar Outdoor Advertising-Lakeland v. Department of Transportation, 2008 WL 809101 at *5, ¶ 22, Case No. 07-5457 (Fla. Div. Admin. Hearings, Recommended Order, Mar. 26, 2008) (proceeding to revoke sign permit).