

**CITY OF TREASURE ISLAND
SPECIAL MAGISTRATE HEARING
CITY OF TREASURE ISLAND V MATTHEW SCHWARZ
June 11, 2008**

The hearing was called to order at 3:02 p.m. by the Honorable Tom Reynolds, Special Magistrate. He gave the information regarding his law firm, and asked if anyone had a conflict to announce it at this time.

Attorney Reynolds asked if anyone had a motion that would affect today's hearing. He then gave a brief explanation of the proceedings that would follow. Attorney Peck explained that everyone needed to be in front of a microphone, and said that we have provided someone to run documents as needed.

Attorney Peck announced the case and provided the address of the property with the alleged violation, and the name of the alleged violator, Matthew Schwarz. Attorney Peck stated that he was the Code Enforcement Prosecutor for the City of Treasure Island.

Attorney Reynolds asked if Mr. Schwarz was present. He is not. Attorney Ethan Loeb introduced himself, and also introduced the people that were present with him. ()

Attorney Reynolds asked for motions to be presented at this time. Attorney Loeb stated that he had a motion. He explained that this case went back a long way. It started with a case that resulted in a federal law suit. In October, 2007 Judge Moody granted in favor of the City on all counts. His client chose to appeal to the 11th Circuit Court. He suggests that this hearing should not occur until there is a ruling in the 11th Circuit Court. A lot of the issues here today are before the 11th Circuit. There may be a ruling here that would be different from the ruling of the 11th Circuit. If the 11th Circuit rules in our favor there would be no reason for these hearings. If the 11th Circuit rules in the City's favor then we would have to deal with that then.

The second reason that he feels this hearing should not be held is that there is a case before the County Court on the exact issue here today. It is the same type of case, but in a different jurisdiction. He feels they should let Judge Demers handle it. How would we reconcile the two if Attorney Reynolds finds a different ruling than Judge Demers? He tried to reach Judge Demers for an emergency hearing, but was unable to. He feels that this should be continued to allow him to go before Judge Demers.

His final reason is that on June 9th he sent a letter to the City Manager, Mr. Silverboard, to make a reasonable accommodation request asking him to provide them with certain remedies and rights that they have previously asked for in the

federal law suit. He asked Mr. Silverboard to reconsider this. This also places him and the City on notice that if the 11th Circuit comes back in favor of his client, this could be deemed a willful violation of the Fair Housing Act. He has not received a response from Mr. Silverboard. This letter should be taken in the context that they don't believe that the citizens of the city should be () for damages in the event that a willful violation is found.

Attorney Loeb stated that he doesn't feel that holding this hearing now is necessary. He feels that it has gone on long enough that waiting a little longer won't hurt anything. He respectfully requested a continuance pending the result of the federal lawsuit, or a ruling from Judge Demers.

Attorney Reynolds asked if Attorney Loeb wanted the copy of the letter that he provided be entered into evidence. Attorney Loeb felt that it should be entered if the case was heard, but had no objection to entering it into evidence at this time. Attorney Peck stated that the City had no objection to entering it into evidence at this time.

Attorney Peck presented the City's opening arguments. He had the Judge's order in favor of the City. There is no stay at this time. Mr. Schwarz filed a 20 lb. complaint in the federal court. The order states that there is no violation of the (). This suit is more about Gulf Coast wanting to buy more expensive property than about their desire to accommodate the handicapped. The court granted summary judgment in favor of the complainant on all 20 counts. The fact that it is on appeal is no reason to have this case delayed. When Mr. Schwarz applied for temporary injunction it was denied. Mr. Schwarz remanded the case back to the federal court. It is their opinion that they do not have jurisdiction over this case. The City is asking for an injunction in the federal case. In this case they are asking for a finding. This case has been delayed long enough, and he requests that they proceed forward today.

Attorney Reynolds asked Mr. Peck if all of the legal issues that were presented today adjudicated in the opinion that he inferred. Mr. Peck stated that he was not involved, but he believes that they were. It was done on summary judgment. Attorney Loeb explained that there were two cases that have been combined in the federal case. The lawsuit filed by the city was based on their interpretation of the code of ordinances, and asked for affirmation from the judge to say no more. Judge Moody remanded it back to the state court and is not adjudicated yet. Judge Moody did issue summary judgment on the other issues. ()

Attorney Reynolds asked Mr. Loeb if he had sought a stay of this proceeding in court. Mr. Loeb stated that they had not. Since the City had asked Judge Demers to wait until the 11th Circuit ruled he felt that this hearing would not go forward. He has spoken with Attorney Daigneault about this. Attorney Daigneault stated that he couldn't stop it, but said that Mr. Loeb was welcome to

get a stay. Mr. Loeb stated that he would get a hearing as quickly as possible, and they should not go forward with this hearing.

Mr. Reynolds stated that he denies the motion made by Attorney Loeb. He feels that this issue has been adjudicated. He understands that they are on appeal, but he feels bound by the ruling at this point. He believes that the district ruling is binding. He stated that he appreciated the legal arguments that were made.

Mr. Peck called Carol Kitts. Ms. Kitts was sworn in by the Clerk. Mr. Peck proceeded to question Ms. Kitts. An evidence file was provided to opposing council. Mr. Loeb stated that he had objections to some of the documents. Mr. Reynolds stated that he could present them when those documents were presented. The Notice of Violation was entered into evidence. Mr. Loeb was asked if he had any objection to that document. He stated that he would object based on the fact that Ms. Kitts had not signed the document. Mr. Powell signed it. Ms. Kitts was asked if it was kept in the Code Enforcement files and in her custody. Ms. Kitts answered in the affirmative. Mr. Loeb had no objection at this point. Mr. Peck continued to question Ms. Kitts. Mr. Peck submitted ordinances to Mr. Reynolds. Mr. Loeb stated that he had no objections so long as those were the ordinances in place at the time of the alleged violation. Mr. Peck confirmed that those ordinances were last amended in 2001. Mr. Loeb stated that he had no objection. Mr. Peck continued questioning Ms. Kitts.

Mr. Loeb raised an objection and stated that the time frame could only go back one year. He stated that 2006 was irrelevant. Mr. Peck stated that he had to prove that a violation existed before a notice of violation was issued. Mr. Loeb's objection was overruled. Mr. Peck continued the questioning of Ms. Kitts. Mr. Loeb made an objection to Mr. Peck's question to Ms. Kitts as to what her knowledge was regarding the use of the property. His objection was overruled. Questioning continued. Mr. Loeb objected to the question as to Mr. Schwarz's relationship to Gulf Coast Recovery. Objection overruled. Mr. Loeb objected to a question regarding uses of similar properties. Mr. Reynolds stated that he was not going to apply the strict use of evidence in this hearing. Objection overruled. Questioning continued. A picture of the back of the property was entered into evidence. Ms. Kitts was asked several questions by Mr. Loeb. Mr. Loeb had no objection to entering the photograph into evidence. Questioning continued. Mr. Peck asked to enter an advertisement into evidence. Mr. Loeb objected based upon relevance, and that the document was modified by handwriting on it. Mr. Reynolds stated that he was concerned about the relevancy of the document and asked Mr. Peck for an explanation. Mr. Peck explained why he considered it relevant. Mr. Reynolds admitted the document to evidence, and stated that he would ignore the alteration of the document. Ms. Kitts was given copies of web pages and asked if she could identify that they were referring to Treasure Island. Mr. Peck asked that the copy be entered into evidence. Mr. Loeb objected based on that there was nothing in the document that suggested the turnover. His objection was based on cumulative and relevance. Mr. Reynolds accepted the

document into evidence. Questioning continued. Mr. Loeb objected to the question being previously asked and answered. Mr. Reynolds overruled. Questioning continued.

Mr. Loeb proceeded to cross-examine Ms. Kitts. Attorney Peck asked several questions of Ms. Kitts. Mr. Reynolds asked Ms. Kitts what forum Ms. Kitts heard Mr. Schwarz testify that the property was being used in the manner that she described. She stated that it was in a code enforcement board hearing. Mr. Loeb asked several questions about her answer. Mr. Peck asked several questions at this time.

Mr. Peck asked to submit the order from the middle district court into evidence. Mr. Loeb asked for a copy of the document.

Mr. Peck stated that the City rests.

Mr. Loeb asked for an involuntary dismissal based on the evidence provided. Mr. Loeb discussed Chapter 162, which is a provision of the code that (). A government can foreclose on a lien. It acts to thwart a landowners enjoyment of a piece of property. The evidence standard is clear and convincing. He stated that the city has proven nothing today. The issue is whether this property is a tourist dwelling. The evidence did not show that it was open to the public, but to a limited group of people – the clientele of Gulf Coast Recovery. Ms. Kitts testified that she heard evidence at hearing held three years ago about a residence that has nothing to do with this structure. The relevant time frame at the time of this hearing is June 11, 2008 to June 11, 2007. He asked Ms. Kitts if she had evidence to show that there has been a turnover of six times or more within this time frame. She answered no. Ms. Kitts was unable to identify if the people going to the residence were guests or occupants. The information is outdated, and based on speculation. It is the city's duty to come forward with leases for the relevant time period. If they have 2006 data, it all becomes irrelevant in 2007. He asked that the case be dismissed in favor of Mr. Schwarz and find that the City has not met their burden at this time.

Mr. Reynolds asked Mr. Loeb about the time for compliance in the Notice of Violation presented as evidence. He asked if the city, to establish its case, would show that Mr. Schwarz was in violation and didn't correct it by the required date of October 13, 2006. Mr. Loeb answered negatively. He stated that on October 13, 2007 he would legally be allowed to rent the property again. He also stated that under the clear and convincing evidence standard, Ms. Kitts couldn't testify as to what happened in 2006. The code enforcement process is not designed to come back years later using evidence that might not exist anymore. The clock reset at midnight on October 13, 2007.

Mr. Peck stated that the only thing that the city has to prove is that he failed to correct the violation within the time that he was given. Whether he is in violation

today or not is irrelevant. () The reason that you are allowed to go to a hearing even though they are in compliance is to establish a repeat violation. We do not have to prove that he is in noncompliance at this time. We have proved that the use is defined as a tourist dwelling. We do not have to prove the defense that it is not being used as a tourist dwelling.

Mr. Loeb stated that the six time rental is relevant. They have to show that there has been a six-time turnover in the occupancy, and the city has not done that. He again requested that the case be dismissed.

Mr. Reynolds stated that he would be taking the motion under advisement. The arguments presented are well thought out. He asked if Mr. Peck wanted the order from the middle district entered into evidence. Mr. Peck answered in the affirmative. Mr. Loeb stated that he did not see how it was relevant at this time. Mr. Reynolds stated that he would receive the order into evidence as the city's exhibit #6.

Mr. Reynolds asked Mr. Loeb if he had witnesses. He stated that he had documentary evidence. Mr. Reynolds recessed until 5:10.

Mr. Reynolds reconvened the hearing at 5:09. Mr. Loeb was asked if he had documentary evidence to present. Mr. Loeb stated that he did have evidence, and asked if the next hearing could be moved to another date to allow him to get ready to go out of town in the morning, and also to meet with Judge Demers. Mr. Reynolds asked what the latest that he could go tonight would be. Mr. Loeb stated that 5:30 would be the latest. He didn't think it would take this long to get through. Mr. Peck stated that the City had no objection, however, he would object to it being reset due to Judge Demers. Mr. Reynolds stated that we will reset the hearing for the next case.

Mr. Loeb asked that the deposition of Mr. Charles Seaman, who was hired on behalf of the City of Treasure Island to give expert testimony, be entered into evidence. Mr. Peck had no objection. It was entered as defendant's exhibit #2. Mr. Loeb stated that we are not waiving our rights to the motion for dismissal by entering this into evidence.

Mr. Loeb asked that Section () of the Treasure Island Code of Ordinances be entered into evidence. Mr. Peck had no objection. It was entered as defendant's exhibit #3.

Mr. Loeb asked that the 1991 Standard Housing Code be entered into evidence. Mr. Peck had no objection. This document was entered as defendant's exhibit #4.

Mr. Loeb asked that a document showing the square footage of the residence be entered into evidence, and asked that the handwritten notes be disregarded. He

also asked that the other residences on it be disregarded and explained that the square footage noted was just the bedrooms. Mr. Peck had no objection. This document was entered as defendant's exhibit #5. Mr. Reynolds clarified that they were asking that he consider only the information regarding 115th Avenue. Mr. Reynolds asked what the handwritten notations meant. Mr. Loeb gave a brief explanation.

Mr. Loeb asked if the affidavit of Matthew Schwarz was entered into evidence by the City. He stated that he was going to offer what was limited in paragraph () into evidence. Mr. Peck objected based on this being pure hearsay. Mr. Schwarz had the opportunity to testify, and he can not cross examine him. Mr. Loeb stated that this affidavit has been sworn to under oath, and that when Ms. Kitts was testifying she testified as to what she had heard from him. The City has opened the door to this, and has offered what they believe Mr. Schwarz's testimony was, so he is allowed to offer this type of evidence. Mr. Reynolds stated that he is going to receive it into evidence as defendant's exhibit #6, and he will give it the appropriate weight.

Mr. Loeb stated that he has no further evidence to present, and rested the case. Mr. Reynolds asked if Mr. Peck had any rebuttal. He answered negatively.

Mr. Reynolds stated that the parties have rested, and Mr. Loeb has a problem time-wise. We would not be able to make your deadline if we have closing arguments at this time. We can stay and have the closing argument today, or you can give me a written closing argument by no later than 5:00 p.m. by next Wednesday, either e-mailed or hand delivered. Mr. Loeb asked if they could have until Thursday. Mr. Reynolds answered in the affirmative. Written closing arguments are due by 5:00 p.m. on Thursday, June 19th. Additionally, with your written closing arguments he would like to see proposed findings of fact and conclusions of law from both of them, and they need to copy each other on those.

The hearing in Case #2008-09, City of Treasure Island vs Matthew Schwarz and Jason Katzel will be continued to be rescheduled by the City. Mr. Peck asked that the witness subpoena be continued. Mr. Reynolds stated that it would be, and asked Mr. Loeb to notify his client of the continued date of hearing.

The hearing was adjourned at 5:32 p.m.