

**CITY OF FORT LAUDERDALE
 NUISANCE ABATEMENT BOARD MINUTES
 CITY HALL, CITY COMMISSION CHAMBERS, 1ST FLOOR
 100 NORTH ANDREWS AVENUE
 THURSDAY, DECEMBER 9, 2010, 7:00 P.M.**

<u>Members</u>	<u>Attendance</u>	Cumulative Attendance 3/2010 through 2/2011	
		<u>Present</u>	<u>Absent</u>
Ted Fling, Chair	P	8	0
D. Ryan Saunders, Vice Chair	P	7	1
Louise Dowdy	P	8	0
Sal Gatanio	P	7	1
Pat Mayers	A	4	4
Matthew Scott, Alternate [7:11]	P	6	2
Tom Wolf, Alternate	P	5	3

Staff Present

Joyce Hair, Board Clerk
 Bruce Jolly, Board Attorney
 Det. Paul Maniates
 Scott Walker, Assistant Attorney
 Det. Agular
 Det. Vanchoff
 B. Chiappetta, Recording Clerk, Prototype Inc.

Communication to the City Commission

None

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Purpose: Promote, protect, and improve the health, safety, and welfare of the citizens by imposing administrative fines and other non-criminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances under circumstances when a pending or repeated violation continues to exist.

1. Call meeting to order; Pledge of Allegiance

The meeting was called to order at 7:01 p.m. and the Pledge of Allegiance was recited.

2. Roll call; witnesses sign log; swearing in

Ms. Chiappetta called roll and determined a quorum was present.

Witnesses were sworn in.

3. Approval of minutes for October 2010

Motion made by Mr. Saunders, seconded by Ms. Dowdy, to approve the minutes of the Board's October 2010 meeting. In a voice vote, the motion passed unanimously.

Chair Fling stated Ms. Hair would notify the City Commission about Ms. Mayers' attendance.

Cases:

- 4. Case Number 09-12-04** [Index](#)
3071 SW 2nd Court
Residence
Owner: Ralph Holmes
• **Notice of Status Hearing**

Det. Maniates stated the property owner had received notice of the hearing by phone and was in attendance.

Det. Maniates announced that in the past 30 days there had been zero calls for service to the property. The owner had made the last payment of \$68.08 this evening. The property was in compliance and jurisdiction on the property ended on January 11, 2011. Det. Maniates wanted the Board to recognize what a great job the owner had done.

The Board agreed the owner should not appear for a status hearing in January.

- 5. Case Number 10-01-01** [Index](#)
844 Northwest 10 Terrace
One Stop Shop
• **Notice of Status Hearing**

Det. Maniates stated George Makhoul, the property owner, had received notice of the hearing on November 1, 2010. The business owner, Nabil Khazem, was present.

Det. Maniates announced that in the past 30 days there had been 14 calls for service to the property, one of which was nuisance related. He explained two arrests at the property were the result of a clerk calling the Police in reference to individuals trespassing. One arrest had been made on the property for possession of cocaine after a vehicle had been pulled over into the parking lot. The property was in compliance and Det. Maniates recommended a status hearing for January 2011.

- 6. Case Number 10-03-02**
2217 South Federal Highway
Advanced Massage Therapy
Owner: Sultan Family Ltd. Partners
- **Notice of Status Hearing**

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Det. Maniates stated the property owner had received notice of the hearing on November 6, 2010.

Det. Maniates announced that in the past 30 days there had been zero calls for service to the property. The property was in compliance and Det. Maniates recommended a status hearing for January 2011.

Detective Maniates confirmed there were no Nuisance Abatement Board signs on the front or rear of the property. He stated there were no issues with the property presently.

At 7:11 Mr. Scott arrived.

Det. Maniates recommended a status hearing in January 2011.

- 7. Case Number 10-06-04**
500 Northeast 13 Street
Business Plaza
Owners: Villamere Julme and Examene Saint-Louis
- **Notice of Status Hearing**

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Det. Maniates stated the property owner had received notice of the hearing on October 30, 2010.

Det. Maniates announced that in the past 30 days there had been eight calls for service to the property, none of which was nuisance related. Det. Maniates had spoken with the owner after the last meeting and confirmed that the lights were in working order. The property was in compliance and Det. Maniates recommended a status hearing for January 2011.

Det. Maniates stated arrests had been made within 1,000 feet of a church and the charge would therefore be increased.

Mr. Gatano remarked that the owner had been doing a great job; the neighborhood had improved. He requested the second light on the west side of the property be made operational. Det. Maniates agreed to check on this.

Chair Fling asked if the building had been put up for sale due to other problems the owner was having with the City. Det. Maniates said these problems related to handicapped issues. Code Enforcement had determined that everything was in working condition, but the owner had hired a contractor to make additional improvements to placate an attorney who had complained.

Det. Maniates recommended a status hearing in January 2011.

- 8. Case Number 10-09-05**
217 South West 19th Avenue
Residence
Owner: Luby and Bruce Hargrett
• **Notice of Evidentiary Hearing**

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Det. Maniates stated the property owner had received notice of the hearing on November 6, 2010.

Det. Maniates announced that in the past 30 days there had been eight calls for service to the property, three of which were nuisance related. There had been a search warrant executed on the property on July 1, 2010 and the Narcotics Unit had received a complaint in April regarding heavy traffic and possible narcotics-related issues at the property.

Mr. Jolly informed Mr. Steven Wallace, the owners' attorney, that the technical rules of evidence did not apply at this hearing.

Mr. Walker called Det. Maniates to testify. Det. Maniates described the nuisance abatement case process and stated certified mail had been sent to the owners to advise them of this hearing. Mr. Wallace stipulated that the owners had notice and confirmed that this property was the owners' homestead.

Det. Maniates informed Mr. Wallace that he did not have personal knowledge of any of the incidents.

Det. Agular testified that on May 19 they received a Crime Stoppers tip regarding illegal activity the residence. Through surveillance, they had observed heavy foot, bicycle and vehicle traffic at the property to conduct what they knew through their training to be narcotics transactions with Mr. Hargrett. After approximately one week of surveillance, they had applied for a search warrant.

On May 19, Det. Agular testified they had used a confidential informant [CI] to purchase narcotics at the property. A criminal case was still pending and the informant had not been divulged to the Court as yet. Det. Agular stated the CI had been equipped with a listening device, and had been searched prior to the encounter. This CI had received no compensation and had no criminal charges pending against him at the time of the operation. On May 19, the CI was able to purchase approximately 1 gram of crack cocaine from Mr. Hargrett at the residence. The contraband had been field tested and tested again at the Station.

Det. Agular stated the CI had been equipped with a Unitel listening device for his safety and Police were located in a vehicle directly across the street. The transaction had taken place at the front door, and the Police witnessed Mr. Hargrett receive money from the CI, go back into the residence and supply the CI with the cocaine. Det. Agular identified Mr. Hargrett for Mr. Walker.

Det. Agular testified that on May 26, they had performed the same operation with the same CI, resulting in the CI's procurement of another gram of crack cocaine. He explained to Mr. Walker that the Police never lost sight of the CI until they recovered the contraband for the chain of custody. Det. Agular said they had never seen Ms. Hargrett during either transaction.

Det. Agular stated they had obtained a search warrant for the residence soon after the second transaction. When executing the search warrant on July 1, Det. Agular said an attempt to get Mr. Hargrett to conduct a sale outside the home had failed and they had then searched the house. Mr. Hargrett had been taken into custody for the previous buys. Police recovered 2.5 grams of crack cocaine, approximately \$90 in a plastic bag and BB guns that were next to the money. Det. Agular said Mr. Hargrett had remarked during the search that he sold the drugs to survive and then invoked his right to remain silent.

Det. Agular informed Mr. Wallace that with his training in the Street Crimes Unit, he could visually detect contraband, and he had been able to do so on May 19. The weight had been determined by calibrated weights. Mr. Wallace asked about the toxicology report and Det. Agular said this was not in evidence this evening. Evidence that the item obtained on May 19 was contraband was his sworn Police report that he had personally field tested it, which he was trained to do.

Det. Aguilar testified that Mr. Hargrett had been identified during their week of surveillance and again during the drug transaction on May 19. He had personally observed the CI exchange \$20 with Mr. Hargrett for the contraband.

Det. Aguilar testified the operation on May 26 had taken place at approximately 4 p.m. and the weather was clear. As with the May 19 sale, the CI was not blocking Det. Aguilar's view. Mr. Walker displayed a photo of the property and Det. Aguilar pointed out where his car had been parked to observe the transaction. Det. Aguilar confirmed that he had field tested the substance purchased by the CI on May 26 as well.

Det. Aguilar explained that they had not used a CI on July 1 because they had already obtained a search warrant. He said Det. Smith phoned Mr. Hargrett regarding purchasing drugs and when Det. Smith showed up at the property, he had been unsuccessful in obtaining drugs and Det. Aguilar and his partner, Jason Vanchoff, had made the initial contact with Mr. Hargrett, he had been detained and the residence searched. Det. Aguilar confirmed that the 2.5 grams of crack cocaine recovered in the search had been field tested as well.

Det. Aguilar and Ms. Hargrett confirmed that the Hargrett's son had been in the house during the search.

Mr. Walker called Det. Vanchoff to testify. Det. Vanchoff identified Mr. Hargrett for Mr. Walker. He stated they had observed heavy foot traffic at the residence for the week they had observed the property. Det. Vanchoff had never seen Ms. Hargrett or the child during surveillance. He stated they had performed the narcotics buys at approximately 4 p.m. because the complainant had indicated that this was a peak time for narcotics sales. He explained that on July 1, they had gotten Mr. Hargrett out of the house and outside the gate to sell to Det. Smith to avoid entering the house to apprehend Mr. Hargrett because it was safer to do this outside. At that time, Mr. Hargrett had refused to sell anything to Det. Smith and subsequently their Sergeant had called upon the take-down team to move in. Det. Vanchoff reported that Police personnel had been waiting in "various strategic locations around the residence in vehicles."

Det. Vanchoff informed Mr. Wallace that at approximately 2 or 3 p.m. one day during the surveillance period, they had identified one person coming from the residence with contraband that had been field tested as crack cocaine. Det. Vanchoff testified that he had an unobstructed view of the residence on May 19. He pointed out his approximate location on the displayed photo and said he could view the front door, the informant and Mr. Hargrett at all times.

Mr. Walker called Mr. Hargrett to testify and Mr. Wallace said since Mr. Hargrett was under criminal investigation, he would invoke his right to refuse to answer to avoid incriminating himself.

Mr. Bruce Hargrett, respondent, refused to answer Mr. Walker's questions, invoking his Fifth Amendment right.

Mr. Wallace called Luby Hargrett to testify. She testified about who lived in the home, and stated she had never witnessed contraband in or being sold from her residence. Ms. Hargrett said she had been married to Mr. Hargrett for approximately 11 years. Under questioning, Ms. Hargrett refused to tell Mr. Walker where she worked, but stated she worked from 3 until 11, so she would have been at work on any of the occasions discussed previously. When Mr. Walker mentioned the 2.5 grams of cocaine the Police had discovered in the bedroom, Ms. Hargrett stated, "They probably the one who put it in there...They set us up." She said after she received the notice regarding the nuisance, "I went around the house hiding...I went and investigated myself, I didn't see nothing..." She said the people visiting the home were friends, neighbors and family.

Ms. Hargrett testified that Mr. Hargrett had been working but he hurt his ankle. She had never known him to supplement his income by selling drugs and she had never seen him come in contact with drugs.

Mr. Jolly remarked that ownership of the property did not affect the Board's jurisdiction over this case.

Motion made by Mr. Saunders, seconded by Mr. Scott, to declare the property a nuisance under the statute.

Mr. Wallace asked permission to make a closing argument and the Board agreed.

Mr. Wallace reiterated that there were charges pending against Mr. Hargrett, and that the field test reports regarding the materials seized had not been admitted into evidence, so they were relying on the Officers' testimony without scientific evidence. Mr. Wallace believed that a palm tree in the yard could have obstructed the Officers' views of the property.

Mr. Walker said the Officers had testified they had clear views. He reiterated the incidents and asked the Board to find the property a nuisance and to recommend implementation of the Police Department recommendations. He stated the Board must decide the credibility of the witnesses.

Mr. Wallace stated Mr. Hargrett had pled the fifth because of the ongoing criminal investigation and said it would be unfair of the Board to hold this against him. Mr. Saunders said he had made his motion based on the testimony presented and the evidence in the Police reports.

Mr. Scott said the Board's job was not to judge Mr. Hargrett's guilt or innocence, but to determine if the property was a nuisance with the goal of improving the neighborhood. Mr. Jolly confirmed that Mr. Scott would not be voting. The Board already had the full complement required to vote.

Mr. Jolly pointed out that since Mr. Scott was not voting, another Board member should second the motion. Mr. Gatania seconded the motion.

In a roll call vote, **motion** passed 5 – 0.

Det. Maniates read the following Police recommendations:

1. The owner will file a No Trespass Affidavit with the Fort Lauderdale Police Department and post No Trespassing signs on property within fourteen days and thereafter enforce trespassing laws.
2. The owner will clearly display, within ten (10) days and for the duration of jurisdiction, both in the front a sign measuring 16"x20" stating that the property is under the jurisdiction of the Nuisance Abatement Board and is being monitored by the Fort Lauderdale Police Department
3. The owner will trim all bushes on the fence line, remove any trash and or discarded items (household and landscape) from the exterior of the property within ten (10) days. The owner will remove all abandoned and unregistered vehicles from the property within ten (10) days.
4. The owner will maintain the property free of debris.
5. The owner will maintain the property free of all illegal narcotics and drug paraphernalia.
6. There will be no illegal narcotics sold or drug paraphernalia used by anyone on the property. If anyone is arrested on the property for selling or using illegal narcotics or drug paraphernalia, the remaining balance of the investigative costs, which total \$1,451.74, will immediately be assessed.
7. The investigative costs total a dollar amount of \$2,831.48. The owner(s) is assessed 50% of this amount, which equals \$1,415.74. This cost is to be paid in ten payments prior each scheduled Nuisance Abatement Board meeting. The

first payment of \$141.61 is due before the January 13, 2011 Nuisance Abatement Board Meeting. If no meeting occurs in January, then prior to the next scheduled Nuisance Abatement Board Meeting. The remaining nine payments of \$141.57 are due before the scheduled Nuisance Abatement Board meeting except for the month of August 2011 which there is no meeting. This payment of \$141.57 is due August 11, 2011. The Board will waive the remaining balance \$1307.94 of the investigative costs if the owner complies with the Board Order within the specified time frame(s). If the owner fails to comply within the specified time frame(s), the remaining 50% \$1,415.74 of the investigative costs will be assessed.

8. If any of the above listed items are not complied with within the time frame(s) set forth, a fine in the amount of \$250.00 per day, per item, not to exceed \$250 per day will be imposed for each day of non-compliance.
9. The owner will appear before the Nuisance Abatement Board at the January 13, 2011 Nuisance Abatement Meeting (or, if no meeting occurs, then at the succeeding Nuisance abatement meeting) for a Status Hearing.
10. The Nuisance Abatement Board will retain jurisdiction over the property for a period of (1) year, December 2011.

Det. Maniates referred to photos and pointed out that the bushes had already been trimmed and this item was therefore in compliance.

Mr. Jolly noted that half the fine was actually \$1,415.74.

Mr. Walker explained that the Nuisance Abatement and No Trespassing signs were used to let the neighborhood know that drugs were not being sold at the property. Det. Maniates said these could be placed on the fence or staked in the ground.

Mr. Saunders advised that recommendation 6, which stated the owner would refrain from using or selling narcotics or drug paraphernalia, should apply to all residents of the home. Mr. Jolly recommended editing this item to indicate that there would be no selling or using of illegal narcotics or drug paraphernalia on the property; if anyone was arrested on the property for selling or using, the remaining balance of investigative costs would be assessed.

Mr. Wallace reminded the Board that only Ms. Hargrett was working and she only brought home \$575 every two weeks. He asked if the fine could be paid monthly over 12 months. Mr. Walker said this was approximately \$128 per month for 11 months.

Motion made by Mr. Saunders to accept the Police recommendations as amended: for item 6 to include anyone in the residence; to reflect the change in the investigative costs to \$1,415.74 to be paid in 10 monthly installments of \$141.51 each; for the Board to retain jurisdiction for one year ending December 2011.

Mr. Gatano wanted the first payment to be paid prior to the Board's January 13 meeting. Subsequent payments would be due prior to each monthly Board meeting. Mr. Saunders accepted this amendment. Mr. Gatano seconded the **motion**.

In a roll call vote, **motion** passed 5 – 0.

Board Discussion

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Ms. Dowdy said it seemed to her that the Police Officers were not given a fair deal on some of these cases. She felt the recommendations should be harsher. Mr. Walker explained that the nuisance abatement process was gradual and started out "kind of on the lenient side." He noted that the Board could do something else, provided it was "reasonable under their facts." For instance, Mr. Walker said if it was established that traffic in narcotics at a property increased during the Board's jurisdiction, the Board could grant the Police the right to enter the property with a Police dog once per week.

Chair Fling wondered if the Board was receiving enough cases. Mr. Walker remarked that the use of red light cameras would free up officers who worked traffic duty and also bring in revenue that might be used to hire additional officers.

Mr. Saunders agreed that the Board did not always do enough, and asked Mr. Walker and Mr. Jolly to discuss what further actions the Board could take.

Mr. Jolly remarked on the success the Board had experienced with the first three cases on their agenda.

Thereupon, with no additional business to come before the Board, the meeting adjourned at 8:58 PM.

The Board's next meeting was scheduled for January 11, 2011.