

SPECIAL MASTER CODE ENFORCEMENT HEARING OF APRIL 11, 2000

MINUTES
TOWN OF OCEAN RIDGE
SPECIAL MASTER CODE ENFORCEMENT HEARING
APRIL 11, 2000

Present: Ken Spillias, Town Attorney, Gregory Dunham, Town Manager, Karen Hancsak, Town Clerk, Edward Hillery, Director of Public Safety and Lt. Stefan Katz.

Meeting called to order at 10:00 A.M.

A. Special Master Paulette Torcivia approved the minutes of Jan. 14, 2000.

Special Master Torcivia explained that this was an informal hearing and rules of evidence were not required, however, the Town may have exhibits that a respondent has the right to make objections to. She added that the Town would present their case and then the respondent may ask questions and be given the opportunity to present their side after which she would render a decision and issue a Final Order.

At this point all individuals that were prepared to give testimony were sworn in.

B. APPEALS

CASE NO. CE2000-03

Mr. William Simmons

RE: Lots 1-4, Lot 9 & 10 and 11 & 12 Briny Breezes Add No. 2 (end of Chickasaw St.)

Nature

Appealing a Lot Violation Fine of \$100.00 as a result of violation of Section 34-6 Town Code of Ordinances

Atty Spillias clarified that this was an appeal request and not a reduction request. Atty Spillias submitted copies of 2 violation letters with certified mail receipts and also another letter notifying that the Town mowed the lot and charged \$36.58 due to noncompliance. All three letters were accepted as Exhibit #1, 2 & 3. He then advised that a 2nd violation provides for an automatic \$100.00 fine which is what Mr. Simmons is appealing. Atty Spillias showed Mr. Simmons three photographs taken by Sgt. Tinfina depicting the overgrown lot and submitted them as Exhibit #4. Special Master Torcivia asked if Sgt. Tinfina was present to which she was advised that he was not. Atty Spillias concluded by stating the property is now in compliance, however, the fine is still due.

Mr. Simmons stated that he did not contest that the grass was higher than the 12", however, he felt that since the vacant property was situated at the end of road leading to the ICWW and was surrounded by high hedges from condominiums to the north and south it was not noticeable to other property owners. He mentioned that the Town used to mow this property in past years and also that his taxes have tripled in 9-10 years. He added that he recently had an Australian pine tree removed after receiving notice by the Town.

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In response to some of the comments from Mr. Simmons Town Clerk Hancsak advised that the Property Appraiser assesses the property and the Town's taxes have raised only minutely. She also stated that approximately 6 years ago the Town did offer a lot mowing service at a cost to property owners, however, the Commission decided that the maintenance personnel were needed for other duties and discontinued the service. She added that unfortunately many of the lots were only maintained after a notice is sent advising that the lot was already in violation. She stated that this prompted the Commission to adopt an ordinance providing for automatic fines if notices became necessary.

Mr. Simmons commented that he and his wife have both been ill and added that he does not live in Ocean Ridge and therefore cannot inspect the property all the time and evidently the company he hired did not cut the lot properly. Special Master Torcivia explained that residing outside the Town was not a valid reason for the violations and added that the respondent may wish to evaluate his responsibilities. She added that the Town officials created this ordinance, which seemed very sound, and anyone interested in changing the ordinance should approach the Commission.

Special Master Torcivia advised that she did find that a violation existed and she would not negate the \$100 fine and added that if not paid within 30 days the fine would be doubled. Mr. Simmons advised that he already had a check made payable to the Town.

C. VIOLATION HEARING

CASE NO. CE2000-02

Scott and Betty Kelso

RE: Lot Description of W 220' of ELY 387.49' of N 181.10' of S 341.10' and W 147' of ELY 387.49' of N 98.90' of S 440' of TH PT of GOV Lot 3 LYG W of Ocean Blvd. (Previous National Wildlife Situated Between Osprey Court and Beachway North)

NATURE OF VIOLATION

Violating Section 34-6 and Chapter 162, Florida Statutes, by tree cutting debris constituting a public nuisance by being a menace to life, property, the public health or public welfare by creating a fire hazard, or providing a breeding ground for sand flies, mosquitoes, rats, mice, other rodents, snakes or other types of pests or vermin and shall be removed from any lot, tract or parcel where found to exist.

Atty Spillias requested a 10 minutes recess while attempting to reach an agreement amongst the three parties. The meeting recessed at 10:30 AM and reconvened at 11: 10 AM.

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All parties prepared to provide testimony were sworn in.

Atty Spillias advised that he believes a stipulation has been reached that he would present into the record and then give Atty O'Connor the opportunity to relay his understanding and input. He added that Atty Geoffrey Bennett, representing the adjacent property owners, may also possibly like to speak.

In order to provide some history Atty Spillias advised that this 1.2 acre parcel was recently sold by the National Wildlife to Scott and Betty Kelso in December 1999. The property is zoned RSF and is bound to the west and south by homes, a private street to the east (Beachway North), and there is a narrow 20' road (David Lane) located to the north that currently has the eastern 10' deeded over to the Town, however, there are encroachments across this easement. The western 10' of the David Lane is currently owned by a private property owner and there is question if this 10' may also be dedicated as an easement. He advised that there is currently ongoing litigation regarding this property.

Atty Spillias advised that in March/2000 the Kelsos were given notice to remove or top the Australian pine trees located on their property. This work did not require a permit. The Kelsos cut the majority of the violative trees, however, the trimmings were not removed because they advised they did not have access to their property. The Kelsos were then subsequently forwarded a Notice of Violation citing Section 34-6 of the Town Code of Ordinances advising them of the public nuisance and there is now also an emergency fire hazard due to the dry conditions.

Atty Spillias submitted six photographs taken by Lt. Katz on March 6, 2000 of the cut trees and also 5 photographs taken by Lt. Katz on April 11, 2000 showing how dry and brittle the trees are now. These were entered as Exhibit #1 and #2. Special Master Torcivia viewed the photographs and agreed that the trees looked dryer and more brittle.

Atty Spillias advised that all three parties have worked hard to attempt to resolve this issue, including Comm Kaleel and started by stating that the Beachway North Homeowners Assoc., more specifically Mr. Lucibella and Mr. Finley, have agreed to allow access to the Kelso property through Beachway North under limited circumstances to include removing the cut trees, cleaning out the underbrush, cutting the stumps to ground level and also subject to the Code Enforcement Officer inspecting the property for any other trees that would be in danger of falling onto adjacent properties and authorizing the Kelsos to remove those also. This work is to be done within the next 7 days by a licensed contractor and a \$2,500 cash bond would be posted in the event of any damage occurring on Beachway North. An additional requirement is that the Kelsos agree not to file for building permit until the flood drain study is completed or 7 weeks from this date. The last part included that if the work was completed within the 7 days then there would be no finding of violation.

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Special Master Torcivia questioned if all parties agreed to the stipulation outlined above to which Atty Bennett advised that they thought the stipulation stated that no building permit would be applied for until the drain study was completed.

At this time the attorneys agreed to recess again to discuss the stipulation. The recess began at 11:40 AM and reconvened at 11:50 AM.

Special Master Torcivia requested to see the Notice of Violation and the certified mail receipt which was then entered as Exhibit #3.

Atty Spillias advised that unfortunately a stipulation could not be reached because the one issue could not be resolved. However, he did ask if Atty O'Connor and the Kelsos agreed to the facts for the prior stipulation as stated to which they did agree.

Atty O'Connor advised that the Kelsos agree that the trees and underbrush should be removed, however, they needed to use some larger equipment, including a truck, but the access presented a problem. Atty O'Connor advised that even though the property was purchased in Dec. 1999 the Kelsos did not do anything on the property until they received notice from the Town regarding the Australian pine tree violation. He mentioned that the Town had given notice to Mr. Katz to remove the encroachments from the David Lane easement, however, this has not been completed and therefore there is no way to access the property.

Special Master Torcivia commented that she was aware there was a legal concern regarding the access, however, the issue brought before her involved the trees that were cut down and the issue of whether they constituted a violation of Section 34-6 and a fire and safety hazard. She added that she was prepared to make a decision at this time and an appeal could be made in court.

Atty Spillias requested that Director Hillery give a recommendation on how quickly the trees should be removed. Director Hillery advised that the trees should be removed by a licensed contractor as soon as reasonably possible (he suggested 7 days) because they do present a fire hazard. Special Master Torcivia clarified that a potential fire could occur which could possibly affect neighboring residents and their homes.

Atty Spillias commented that when the property was purchased in Dec. 1999 the owners were aware there was an access issue and also an encroachment on the legal access which has not been resolved as of yet. He added that they were aware of this problem prior to cutting the trees. He suggested that the Kelsos be given 7 days to correct the violation failing which the Town would have the work completed and invoice the cost back to them. Special Master Torcivia questioned where the Town would enter in the event of an emergency to which Director Hillery advised they could enter the property anywhere but probably off of Beachway North in the event of a fire.

Atty O'Connor stated that he felt his client was being punished for cleaning and cutting the violative trees and also because the Town or neighboring residents are not providing

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them access to clean away the debris. He added that his client was being deprived of their rights and reiterated that no work was completed until after a notice was sent by the Town. Atty O'Connor stated that he did not feel his clients were in violation of the code and asked the Special Master to find no violation and further requested a reasonable amount of time to remove the debris.

Special Master Torcivia advised that she did find the respondents in violation because of the emergency health and safety hazard, although she did realize and understand the complications related to this property, because a process was starting by cutting the trees. She advised that her Final Order would state that a licensed tree company must remove the trees within 7 days using Beachway North as a limited access, and if the nearby property owners refuse access the police shall be called to allow such access. The company shall confer with the Fire Chief as to any of the tree debris, stumps, needles and those still standing that are potentially dangerous that may be a fire hazard that should be removed. The respondents have until April 18, 2000 to come into full compliance with a daily fine of \$250 commencing April 11, 2000. The respondent must post a \$2,500 bond to insure that any property damage caused by this removal is corrected.

Atty O'Connor advised that his clients were in the process of trying to get a tree company now but it may take more time than the 7 days. Special Master Torcivia advised that she was making it possible for them to utilize Beachway North and that it may be necessary to pay additional monies to the contractor.

Atty Bennett clarified that the removal included the trees and vegetation that are already felled, the cut stumps and the fallen needles. He also clarified that the respondent would be responsible to remove any Australian pine trees that Director Hillery deems a fire hazard only. Any other tree removal would be for an extenuating circumstance.

C. Adjournment

The meeting was adjourned at approximately 12:25 PM.

Town Clerk