

SPECIAL MASTER CODE ENFORCEMENT HEARING OF JUNE 20, 2000

MINUTES
TOWN OF OCEAN RIDGE
SPECIAL MASTER CODE ENFORCEMENT HEARING
June 20, 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 was called to order at 10:05 A.M. However, due to the absence of the respondent the meeting was recessed and reconvened at 10:15 A.M.

A. Special Master Paulette Torcivia approved the minutes of May 16, 2000.

Special Master Torcivia explained that this was an informal hearing and rules of evidence were not required, however, the Town may have exhibits or witnesses that a respondent has the right to respond 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. VIOLATION OF STIPULATION AGREEMENT RELATING TO THE FOLLOWING ORIGINAL CASES

CASE NO. CE99-22

James Geiger and/or Edward Garnett

RE: 32 Spanish River Drive

Nature of Violation

Violating Section 14-26(a) and 26-33(a) by permitting the construction and erection of fence gates, without applying for or obtaining a building permit which also exceeds a maximum height of 4' in the required front yard

CASE NO. CE99-24

James Geiger and/or Edward Garnett

RE: 32 Spanish River Drive

Nature of Violation

Violating Section 14-96(2) by filling without a permit

Atty Spillias advised that two new Affidavits and Notices of Violation were sent to James Geiger and Edward Garnett on May 25, 2000 and he requested that they be entered as Exhibit #1 and #2. He also requested that the following items be entered as exhibits: the white and corresponding signed green certified mail receipt sent to James Geiger, 2905 N. Palm Aire Drive, Pompano Beach, FL 33069 (as Exhibit #3), the returned unclaimed certified letter sent to Edward Garnett at 32 Spanish River Drive, Ocean Ridge (as Exhibit #4), Code Sections 26-33, 14-26, and 14-96 (as Exhibit #5), and a copy of the Final Order with attached Stipulation Agreement (as Exhibit #6). Atty Spillias

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commented that the Town would particularly be addressing 2(C), 2(D), and 2(F) of the Stipulation Agreement. The exhibits were all given to Mr. Garnett prior to Special Master Torcivia accepting them into the record as evidence.

Atty Spillias advised that his first witness would be Town Manager Dunham. He then clarified that Mr. Dunham was aware of the stipulation and its requirements and proceeded to read section 2(C) concerning the gate. He asked Mr. Dunham if he had ruled on an amended permit within 10 days to which he advised he did review a permit for a chain link fence surrounding the entire property and for gates. He stated that typically when reviewing plans if a violation of the zoning code exists he indicates it on the plans so that the County Building Department is aware, which was done in this case. He added that he made distinct markings that the gates were in violation. He added that no revised or amended plans were ever submitted. Atty Spillias then read the portion of the same section regarding a variance and asked if the respondent ever attempted to seek a variance to which Mr. Dunham advised that they did not.

Atty Spillias read section of 2(D) of the stipulation and asked if a fill permit was ever submitted to which Mr. Dunham advised that one was not. Atty Spillias asked if the Town ever received letters from all of the adjacent property owners or a certification from an engineer to which Mr. Dunham advised that the Town did not. Atty Spillias then stated that the fill was placed on the property without a valid permit. Special Master Torcivia clarified that fill had been placed on the property to which Mr. Garnett advised that fill was placed on both the lot with the residence and the vacant lot.

Special Master Torcivia asked Mr. Garnett if he had any questions for Mr. Dunham. Mr. Garnett asked if Mr. Dunham had received a telephone call from an engineer approximately one week ago to which Mr. Dunham advised he did not speak to an engineer or see a message from one.

Special Master Torcivia asked when the stipulation required compliance to which she was advised that the longest period was thirty days from January 24, 2000 or if a variance was sought for the gates then they must appear by March 2000.

Atty Spillias then asked Lt. Katz if the Affidavit and Notice of Violation was issued by him to which he advised it was and he personally observed the violations and had taken photographs. Special Master Torcivia then clarified with Mr. Garnett that Mr. Geiger and Mr. Garnett lived at the residence according to Mr. Garnett.

Lt. Katz then submitted 6 photographs taken this date depicting the gates taken at the front of the residence. Mr. Garnett reviewed the photos and Special Master Torcivia advised she would accept the photos as Exhibit #7. Mr. Garnett commented that the photos do not show that one of the gates have been relocated. Lt. Katz advised that the gate heights varied from 4' to 4'10" to 5'10" on the front portion, plus the columns.

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Lt. Katz then submitted 6 photographs taken this date depicting the back gates which Special Master Torcivia accepted as Exhibit #8 after Mr. Garnett reviewed same. Lt. Katz commented that the gates were still in violation.

Atty Spillias asked Lt. Katz if at the time of original hearing he observed fill on the lot without a permit to which he advised he did. Special Master Torcivia questioned how much fill was brought in to which Lt. Katz advised that there were at least 10 piles approximately 4' high.

Special Master Torcivia asked Mr. Garnett if he had any questions for Lt. Katz. Mr. Garnett questioned how Lt. Katz measured a height of 4'10" for the gate. Lt. Katz advised that it was measured with a tape measure according to Section 26-33.

Special Master Torcivia asked when the fill was first observed to which she was advised Nov. 17, 1999.

Special Master Torcivia asked the Town if they had a recommendation. Atty Spillias recommended that since there were actually two violations, including the violation of the stipulation agreement and the code violations, the fine should commence from the beginning of the Notice of Violation, which was May 26, 2000, until compliance.

Mr. Garnett commented that he was obviously outgunned for this hearing, citing that the Town had several representatives including an attorney, and added that he felt these violations were set up to aggravate and frustrate him. He added that he purchased the property 3 or 4 years ago and he has been cleaning it up ever since he was merely attempting to catch his property up to his neighbors. He added that he believes that the previous owner brought in at least 1,000 yards of fill with no problem from the Town. He stated that he believes that he was singled out because he owns a large piece of property and that other property owners, citing Hudson Ave., have also brought in fill with no permits. He added that he has had conversations with Shaw Trucking who advised him that they deliver fill all the time in Town.

Special Master Torcivia questioned the Town Manager on how difficult it was to obtain a fill permit from the Town. Mr. Dunham advised that permits were routinely done.

Mr. Garnett advised that he brought along Gary Eilen, Real Estate Property Appraiser, to corroborate his side of the story. At this point Mr. Garnett showed Special Master Torcivia a copy of a letter in the Bullet News from a Mr. and Mrs. Piantidosi, 31 Spanish River Dr., Ocean Ridge, complimenting the work completed by Mr. Garnett. Special Master Torcivia accepted this item as Exhibit #1 for the respondent. Atty Spillias stated his objection based on relevancy rights.

Mr. Garnett stated that the stipulation required that in order to obtain the fill permit he either needed a letter from the neighbors, of which he had gotten 3 out of the 4 neighbors, or a fill permit. Special Master Torcivia requested that Mr. Garnett read that section of

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the stipulation to which he read a portion and she read a portion clarifying the requirements.

Mr. Eilen commented that the fill permit had been applied for and the stipulation provided for either the letters from neighbors or from an engineer. Special Master Torcivia stated that all adjacent neighbors must provide a letter. Mr. Eilen stated that because one of the neighbors would not sign off Mr. Garnett hired an engineer. He then provided a faxed report from Nutting Engineer and after review by the Town the Special Master entered it as Exhibit #2 for the respondent.

Mr. Garnett advised that the engineer had been busy and did not have the opportunity to forward the report until yesterday (6/19/00). Special Master Torcivia questioned whether he had a copy of the engagement letter also to which he advised he did not. She also asked Mr. Garnett when he contracted with the engineer to which he advised approximately 2-3 weeks ago. Mr. Garnett stated that he has been continually in touch with Town Manager Dunham and he has spent approximately \$10,000 in landscaping and stated that he was aggravated that this was the thanks he receives.

Special Master Torcivia questioned when the fill was first brought in to which Mr. Garnett advised over a period of 5 months, from Nov. and into February. She then asked how much and he stated over 10 piles but he did not recall how many yards. He added that the fill was graded and compacted, however, he was stopped by the police described as code enforcement. She also clarified that a bobcat and compactor were utilized. Special Master Torcivia asked how long Mr. Garnett has owned a home and/or property to which he advised 40+ years and he always improves them.

Regarding the gate, Mr. Garnett stated that he did pull a permit for the gate through the fence permit and that it took 5 months for the permit to be approved since the gates were part of it. He added that he put up the gates, columns, and hedges with a friend because he couldn't get the permit. He also advised that he has relocated one of the gates closer to the house.

Special Master Torcivia questioned when the pillar was placed which Mr. Garnett advised probably Nov. 1999, the same time that he contracted Budget Fence. Mr. Garnett commented that he erected the gates and they were only 4' high and that he only planned on the gates remaining while proposed construction would be completed on his home. He added that plans were being drawn up now. Special Master Torcivia questioned when he thought the gates could be removed to which he advised within a year.

Mr. Garnett stated that he did not feel he was in any violation. Mr. Eilen commented that an owner/builder permit had been applied for the gate. Mr. Garnett added that he had spoken to the Town Manager who he said advised him that as long as he was working on relocating the gates there was no major problem.

Atty Spillias questioned Mr. Eilen whether he submitted for the fill permit with the affidavit signed by Mr. Garnett. Mr. Eilen stated that Mr. Garnett signed the application,

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which could be considered the affidavit. Atty Spillias also clarified that only 3 of the 4 neighbors submitted a letter and the fax from Nutting Engineer was dated 6/19/00.

Atty Spillias questioned when the gate permit was applied for, which code compliance did it meet, either the height or setback requirement. Mr. Eilen stated that the gate column would not be lighted and he did not know which requirement was met for the application, but added they did not seek a variance.

Atty Spillias asked Mr. Eilen if he was experienced in dealing with an engineer to which he advised that in dealing with due diligence issues yes he was. Atty Spillias then asked if the report from Nutting Engineers included a seal to which Mr. Eilen and Mr. Garnett advised that the final report was forthcoming.

Atty Spillias asked Town Manager Dunham if a gate permit application had been applied for to which he advised that to the best of his recollection one had not and added that the gates were erected before the fence permit application was submitted. Mr. Garnett stated that the gates were not erected prior to the permit application. Mr. Dunham continued by stating that the fence company submitted an application for the fences and gates that were already there and he had 2-3 subsequent conversations with them regarding the gates needing to be lowered or moved back. Questioning the statement made by Mr. Eilen that the gate permit has been applied for, Atty Spillias asked Mr. Dunham if the permit application showed a 25' setback or 4' height. Mr. Dunham commented that he does not recall the permit application and he would have to research it, however, if it was not according to code then a variance from the Board of Adjustment would be necessary. Special Master Torcivia clarified that the Board of Adjustment met on demand.

Special Master Torcivia asked Town Manager Dunham if he has been in constant communication with Mr. Garnett as he had stated earlier. Mr. Dunham advised that he has been in contact with Mr. Eilen 3 or 4 times since November but has not spoken to him in several months and it was not on a consistent basis. Mr. Garnett advised that Mr. Eilen was not involved with his property until late March not November.

Atty Spillias recalled Lt. Katz and asked the method in which he measured the fence or gate. Lt. Katz advised that he used a tape measure and measured from the base of the structure on the side to the top. Atty Spillias questioned the height of the officer standing in front the structure in the photo. He was advised that Officer Rosenberg was 5'9". He then asked Lt. Katz when the first Notice of Violation was observed. Lt. Katz advised that the gates were observed Oct. 18, 2000 and the notice was sent on Oct. 26, 2000. Atty Spillias clarified that the gate was measured according to Section 26-33 of the code.

Atty Spillias entered 3 photos depicting at least 10 fill piles on the lot taken 11/1799 as Exhibit #9.

Town Manager Dunham clarified that he did have several conversations with Gary Eilen and reminded the Special Master that the goal was to achieve compliance. He added that

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Mr. Eilen had indicated that the gates would be moved and one was and he thought the remainder would be brought into compliance sometime in April, but it was not.

Regarding the fill, Town Manager Dunham stated that the signatures did not meet the criteria of the stipulation and therefore the permit was not issued. He added that he did not believe that he had spoken to Mr. Eilen since March.

Atty Spillias clarified that the proper reading of the stipulation regarding the fill states that the fill permit will be accompanied by an affidavit from Mr. Garnett and either the letter from neighbors or a certification from an engineer of which neither was done. He added that Mr. Lunny, esq., and Mr. Garnett were present at the last hearing and received copies of the stipulation. He added that as Mr. Garnett expressed earlier the town too was frustrated that compliance has not occurred considering that 6 months have passed since the stipulation was accepted and 8 months since the initial violations.

Mr. Garnett stated he was gunned at the attitude of the Town Attorney and stated he was not in violation but he guessed he actually was. He added that he just wanted to be left alone and be able to keep his gates up. He mentioned that if he set his gates back and his children get hurt that he would blame the Town. He also added that he hates to get excited but he was upset and he would take this wherever he felt it needed to be taken. He then commented that his neighbors compliment him constantly.

Special Master Torcivia advised that she has reached her decision and told Mr. Garnett that most if not all communities have rules in Florida and permits are needed for certain improvements or repairs. She stated that one should be aware that permits are necessary prior to the work commencing.

Special Master Torcivia stated that she found violation for both counts and the respondent had until June 30, 2000 to comply after which a \$150.00 per day fine would be assessed to each violation (99-22 and 99-24). She advised that she knew the fence permit may take longer to obtain and therefore added that if compliance was met after the 30th due to special circumstances she may entertain a fine reduction. She clarified that the fill permit must be accompanied by certification by the engineer including exactly all that the stipulation required and the affidavit by the respondent. Special Master Torcivia clarified that after June 30, 2000 a lien can be placed on the property.

Mr. Garnett asked if the time frame could be extended to 60 days considering he has had some financial problems and there is no danger involved. Special Master Torcivia stated she would not extend the time frame adding that she felt he already had ample time to achieve compliance. Mr. Garnett questioned where he could make an appeal. Special Master Torcivia advised that he could appeal to the circuit court within 30 days.

C. Adjournment

The meeting was adjourned at approximately 11:45 PM.

Town Clerk