

SPECIAL MASTER CODE ENFORCEMENT HEARING OF SEPT. 11, 2001

MINUTES  
TOWN OF OCEAN RIDGE  
SPECIAL MASTER CODE ENFORCEMENT HEARING  
SEPTEMBER 11, 2001

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

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

A. The minutes of January 9, 2001 were not adopted at this hearing.

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. VIOLATIONS

CASE NO. CE2001-07

Scott and Betty Kelso, 16 Sailfish Lane, Ocean Ridge FL

RE: W220' 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 Property Situated between Osprey Ct. and Beachway North)

NATURE OF VIOLATION

Violate Section 26-47 of the Town Code of Ordinances by permitting Australian pine trees to exceed the height necessary for such trees to extend onto the real property of an adjacent property owner if such tree should fall. Such excessive growth shall apply to adjacent and public property and shall constitute a nuisance.

The respondents were present.

Special Master Torcivia accepted the following evidence as Town exhibits: Notice of Violation/Affidavit, with attachments including Ordinance #515, a letter dated 9/4/01 from Scott and Betty Kelso, and the certification of hand delivery to Scott or Betty Kelso signed by Officer Darville as #1, and 7 photographs taken 9/11/01 by Lt. Katz as #2.

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Special Master Torcivia questioned whether this was a repeat violation since she remembers another case with the respondents. She was advised that it was not a repeat violation.

Special Master Torcivia inquired how long the trees have been on the lot to which Lt. Katz advised at least 10 – 20 years. She also asked if there were any other trees the same approximate size. She was advised that there were, however, the town is going through the areas in town and they are being removed. Lt. Katz advised that some Australian pine trees were recently removed from the dune in this area after the homeowner was either cited or notified to remove same. Atty Spillias clarified that these Australian pine trees are tall enough to fall onto neighboring properties.

Special Master Torcivia questioned what the town's recommendation would be. Atty Spillias explained how this property was landlocked and still in litigation and still has not been given voluntary access by any of the property owners. He added that the owner of 5 Beachway North advised him that if the Special Master issues the same order as before allowing them to utilize Beachway North then the property owner would seek judicial action to stop it. He went on to say that ultimately the town feels the trees have to be trimmed back and said that she could authorize the town to go in and clear the trees and then invoice the respondents and added that the town recognizes the difficult situation for the Kelsos.

At this point Director Hillery was sworn in and the Special Master asked if there was a fire on the property where would the fire department gain access to fight the fire. Director Hillery advised that the access would depend on where the fire was. Director Hillery commented that during the last three months the town has been concerned with several strong storms after the drought and the fact that several Australian pine trees on the dune were dropping large limbs and the road actually had to be closed three times. He added that the town was making a concerted effort to have trees removed, with it being hurricane season. He stated that he cited the respondents after a resident had contacted him regarding the trees on the Kelso property falling and possibly landing on their property and his review confirmed same. He added that Mr. Kelso had approached him while the trees were being removed on Old Ocean Blvd. and advised there was no access for him to remove the trees. Director Hillery advised him that the access would be determined at the hearing along with the safety issue for the residents and property in the area. He concluded by stating that he was asked by a resident to negotiate with the Kelsos about trimming seagrapes and he advised that he was not a broker and would not discuss those issues. Atty Spillias asked Director Hillery who the complainant was to which he advised Mr. Schulte, who is a resident of the Beachway North subdivision.

Special Master Torcivia stated that according to Chapter 162 the town can go in the area and charge the resident, however, she stated that she did believe the respondent would take care of the violation and it may actually be more expensive if the town had the work completed.

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Mr. Kelso asked Lt. Katz if other residents had been cited to which he advised yes and stated he would have to pull the files to retrieve all the names. He then asked Director Hillery which access was allowed last time access was given to which he advised it was through Beachway North. Mr. Kelso then read a prepared statement (marked as Exhibit #3) and is made part of the file. In summary he reiterated information on the first violation (Hearing of 4/11/2000), some comments regarding this violation such as the ROW still not being cleared, commenting that they had wanted all the Australian pines removed when they removed the previous trees, the fact that they were willing to give the town permission to remove any exotic trees, and the submitted building plans include a lush landscaping plan. In conclusion he stated that they were requesting to clear all the exotics from their land (or have the town accomplish it), without penalty or fine, since they had done everything possible not to be negligent in the matter. He added that the adjacent property owners and the town, whose Safety Officer neglected to declare the trees a safety hazard when access was provided over a year ago, have purposely blocked them in this aim. He also stated that they felt this has been harassment and were therefore asking the Special Master to reimburse their expenses for attending and preparing for this meeting, especially in light of the change from 8:30 AM to a 10:00 AM meeting.

Atty Spillias stated that from a factual standpoint the town could not argue the issues (with the exception of the harassment part). However, he did state that he noticed the night before there was a mistake in the meeting time given to the Kelsos and suggested that the town notify them of the mistake. He added that last year the respondent was cited on a fire hazard only because Australian pine trees have been an issue for awhile and the ordinance called for eradication by 2006. He added that last year's fire safety hazard does not negate this year's violations.

Special Master Torcivia commended Mr. Kelso on his response and asked how long they felt it would take to remove the trees. Mr. Kelso stated he felt it would take at least a month.

Rich Lucibella, 5 Beachway North, stated that he was the property owner east of the subject property and he proposed a voluntary solution to get the Town off the hook and also a way for the respondents to comply. He stated that the respondent also owns property on the dune in front of his home and adjacent neighbors. He suggested that they authorize the trimming of the seagrapes in accordance to state and town code (at no cost to them) and then the Beachway North property owners would voluntarily allow access to remove the Australian pine trees. They would also agree to allow a contractor access to maintain the lot on a specified basis. He argued that he did not believe the Special Master could allow a temporary taking of his property again and this was not an emergency issue now.

The respondents responded by stating that they felt this would create a beautiful view for homeowners of the ocean, however, they would still not allow access to them to build their home.

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Special Master Torcivia stated that she would issue a finding of violation because of the concern from some of the neighbors and the fact that Australian pine trees are a pest plant with weak, brittle branches, and a shallow root system. She added that most State Parks have already removed Australian pines and also Maleluca trees. She stated that the order shall state that the subject trees shall be cut down and wood removed by November 30, 2001, however, once the cutting has commenced the respondent shall have 7 days to complete same. She stated that any damage to the neighbor's road, Beachway North, and/or adjoining property shall be restored to its original condition by November 30, 2001. She added that the town should assure that the respondents are provided reasonable access to the property via Beachway North so the respondents can comply with the order.

Mr. Lucibella commented that in his opinion the Special Master was overstepping the authority by allowing access over his property when there is another access and also other offers to the respondents. Special Master Torcivia stated that there was no other logical access at this time for the removal of the trees to provide safety for the neighbors.

Mr. William Finley, 3 Beachway North, questioned if the order included the provision for a performance bond. Special Master Torcivia stated that she was omitting the bond because the respondent followed the order last time. She added that if the owners were concerned then they should take a photograph before the work has commenced and bring the issue back before her if any damage is not corrected.

### C. Adjournment

The meeting was adjourned at approximately 11:10 AM.

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Town Clerk