

SPECIAL MASTER CODE ENFORCEMENT HEARING OF JULY 9, 2002

MINUTES
TOWN OF OCEAN RIDGE
SPECIAL MASTER CODE ENFORCEMENT HEARING
July 9, 2002

Present: Kenneth Spillias, Town Attorney; Karen Hancsak, Town Clerk; and Director Edward Hillery.

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

A. The minutes of January 22, 2002 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 she would render a decision and issue a Final Order since the respondent was not present.

At this point all individuals that were prepared to give testimony were sworn in. Special Master Torcivia advised that she would address Case No. 2002-03 first.

B. VIOLATIONS

CASE NO. CE2002-03

Gerald Duthler, 5004 Old Ocean Blvd., Ocean Ridge FL 33435

RE: 5004 Old Ocean Blvd. or legally described as Part of Lots 18 and 19 Unrecorded Plat of Blue Ocean Subdivision Blk A Unit 1

NATURE OF VIOLATION

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

The respondent and his attorney, Susan Taylor was present.

Special Master Torcivia accepted the following evidence as Town exhibits: Photographs showing that the Australian pine tree has been removed as #1; the Affidavit and Notice of Violation, Section 26-47, receipt for certified mail and the executed return receipt for the Certified Letter as #2. She also accepted a copy of survey as exhibit #1 for the respondent presented by Susan Taylor, attorney representing Mr. Duthler.

Director Hillery explained that the property where the trees are located is actually owned by two parties, Mr. Duthler and Michael and Leslie Hirsch, and is located east of Old Ocean Blvd. opposite their duplex at 5002 and 5004 Old Ocean Blvd. He added that

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Mrs. Hirsch was present at the hearing also and there was still a question whether two of the three trees were actually located on the Hirsch side.

Ms. Taylor showed the on the survey that she submitted that the north 32.5' belonged to Mr. Duthler and the south 32.5' belonged to Mr. and Mrs. Hirsch. She stated that Mr. Duthler has removed the tree located on his property and he went out and measured and the other two trees were located on the Hirsch property.

Atty Spillias suggested that final determination on compliance be delayed until after the case concerning the Hirsch property is discussed.

CASE NO. CE2002-04

Michael Hirsch, 5002 Old Ocean Blvd., Ocean Ridge FL 33435

RE: 5002 Old Ocean Blvd. or legally described as Part of Lots 18 and 19 Unrecorded Plat of Blue Ocean Subdivision Blk A Unit 2

NATURE OF VIOLATION

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

Respondent was present.

Special Master Torcivia accepted the following evidence as Town exhibits: the Affidavit and Notice of Violation, Section 26-47, receipt for certified mail and the executed return receipt for the Certified Letter as #1; 2 Photographs taken this date depicting the Australian pine trees midway on the property and 4 additional photographs showing breaking limbs.

Director Hillery explained Section 26-47 to the special master and advised that the Town also had an ordinance in place for the total removal by 2006.

Mrs. Hirsch commented that she had advised the Town that it was their intent to transfer this property to the County as part of their Shoreline Protection Plan. Special Master Torcivia asked if she had a copy of a letter of intent to which Mrs. Hirsch advised that it was a verbal agreement that started approximately one year ago. She added that subsequent to that she was possibly going to sell the property but it fell through. She stated that once she received the Notice of Violation from the Town she contacted the County Again.

Daniel Bates, Supervisor with the Palm Beach County Beach Program, stated that they currently had a couple of active programs in the area, including a dune restoration project

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in Gulfstream and the Shore Protection Program. He commented that it was the County's intent to obtain the property, remove the exotic vegetation and replant and put in a walkover and ramp for access to the beach. He added that funds were budgeted; however, they should have the paperwork in approximately two weeks and the trees down in an additional two weeks.

Atty Spillias stated that the Town had concerns with the time frame because this has already been promised once and now with it being hurricane season he suggested that the trees be removed within two weeks, failing which would constitute a \$100 daily fine.

Special Master Torcivia asked Mr. Bates if the County could accomplish the removal quickly if the Hirsch's granted permission. Mr. Bates advised that the paperwork still had to go before the County Commissioners. She then asked if all the documents have been signed to which he advised that there were no signed documents at this time.

At this point Mr. Duthler was advised that based on the testimony provided he was now in compliance and could leave. Mr. Duthler wished to relay that he complied with the code and felt that no extension should be granted to the neighboring property.

Mrs. Hirsch commented that part of the delay in completing the donation to the County was that Mr. Duthler had offered to purchase the property and the Town had also expressed interest in obtaining the property. Special Master Torcivia stated that the fact still remains that the trees need trimmed or removed so that it doesn't fall onto another property. The Special Master inquired if the Town had any type of document from the notice given last year. Atty Spillias advised that the Town did not; however, Mrs. Hirsch has already acknowledged conversations from a year ago. He added that the trees are now dropping limbs and the road had to be cleaned several times.

After some further discussion, Special Master Torcivia advised that she was finding violation and that a document transferring the property to the County must be given to the Town by July 12, 2002, the trees must be cut/removed by August 16, 2002 failing which would constitute a \$100 daily fine. She added that if the letter is not received by July 12, 2002 the trees must be removed by July 26, 2002 failing which would constitute a \$100 daily fine. She added that if the work is completed after the dates specified specified the respondent could come back before her to seek a reduction in the fine until August 30th when the Town would be permitted to file a lien against the property.

CASE NO. CE2002-05

John and Miranda Andrews, 30 Anna Street, Ocean Ridge FL 33435

RE: Lot 10, Block 2, Boynton Beach Park Subdivision (43 Coconut Lane)

REQUEST TO APPEAL

Request to Appeal an automatic \$100.00 lot violation fine based on a violation letter written on June 20, 2002 for a lot that was found in violation on June 9, 2002

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Respondent was present.

Special Master Torcivia accepted the following evidence as Town exhibits: the certified mail receipt and letter of notice as #1; 2 Photographs taken on June 20, 2002 as #2; a prior letter of violation with a copy of incident report dated March 12, 2002 with green certified mail receipt as #3; and a faxed letter by Mrs. Andrews requesting to appeal the violation as #4.

Special Master Torcivia clarified that the later letter was an automatic fine.

Mrs. Andrews asked for the definition of overgrown to which Atty Spillias read Section 34-6 of the Code of Ordinances. Mrs. Andrews stated that she did not believe the photographs show the lot being overgrown.

Public Safety Officer Gene Rosenberg, also present, reviewed the incident report and photographs and advised that on June 20th he was asked to check the lot to see if it was still overgrown and to take photographs. He added that he also took two photographs today. Atty Spillias reminded that this violation was for overgrown grass only and that today it was actually over 12”.

Mrs. Andrews advised that she felt the photographs showed a palm tree with soil built up around it and wildflowers growing around it and did not feel that this constituted a violation. She added that she also spoke with her landscape maintenance company, Willie's Lawn Service, who advised her that the property was cut on June 21, 2002 and he continually maintains the property every other week. Mrs. Andrews asked who actually wrote up the original violation to which Town Clerk Hancsak advised that Ofcr Darville wrote the original complaint, and two other officers wrote supplements.

Special Master Torcivia commented that it was hard to judge from the photographs if the lot is overgrown.

Special Master Torcivia accepted the following evidence as exhibits from the Respondent: a composite of two photographs of the property taken on June 20, 2002 as #1; and a calendar showing the dates the property was mowed as #2.

At this time Director Hillery advised that he would go to the property and obtain a sample of the overgrown grass/weeds and take photographs.

Special Master Torcivia suggested handling Case No. 2002-02 in the interim.

CASE NO. CE2002-02

Gary Kosinsky, 6013 N Ocean Blvd., Ocean Ridge FL 33435
RE: 6013 N. Ocean Blvd., or
legally described as Pt Lot 3& 4, and Pt of

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Lot 5, Blk 5, Boynton Sub Amended and Part of
Muck Lot 38

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Special Master Torcivia accepted the following evidence as Town exhibits: Notice of Violation with certified receipt as #1; a letter dated June 24, 2002 from the respondent asking for an extension until July 31, 2002 (which the Town agrees to) as #2; and a photograph of the tree in question as #3.

Atty Spillias advised that the Town is in agreement with the stipulation and recommended a \$100 daily fine if not brought into compliance.

Special Master Torcivia advised that she did find there was a violation and her order would state that if the tree was not brought into compliance by July 31, 2002 there would be a \$100 daily fine.

At this time Director Hillery returned and showed two photographs of the lot just taken and also showed the ruler used to measure the grass. Special Master Torcivia accepted the two new photographs as Exhibit #4.

Special Master Torcivia advised that she did find there was a violation and would deny the appeal and the respondent must pay the \$100 fine. She added that the respondent could appeal to the circuit court.

Mrs. Andrews commented that her neighbor's property was in violation to which the Special Master advised that she would need to discuss this with the Town representatives. Mrs. Andrews also stated that she felt it odd that she had never been noticed before, except for this year when she did not donate to the Police Benevolent Assoc. and felt it was a strange coincidence.

C. Adjournment

The meeting was adjourned at approximately 11:30 AM.

Town Clerk