

MINUTES  
TOWN OF OCEAN RIDGE  
SPECIAL MASTER CODE ENFORCEMENT HEARING  
MARCH 14, 2005

Present: D. Bill Mathis, Town Manager; Karen Hancsak; Town Clerk, Lt. Stefan Katz, Sgt. Eve Eubanks, and Kenneth Spillias, Town Attorney.

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

A. The minutes of March 1, 2005 were adopted.

Special Master Glen 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. He added that the Town would present their case and he 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 HEARING

**CASE NO. CE#2004-36 Gary Cantor, 7 Ocean Harbour Circle, Ocean Ridge FL 33435**

**RE: Lot 46, Inlet Cay Subdivision (46 Bimini Cove Drive)**

**NATURE OF VIOLATION**

Violate Section 63-118(B), Ordinance 229, Ordinance 345, 64-8, 64-43(A)(B), and 64-54(A) of the Town Code of Ordinances by allowing a non-resident use of the premises to exist, which is prohibited, by being in violation of the Town's established zoning map, by allowing the property to be used as a private club in violation of the access requirements as well as the minimum area requirements, and allowing the property to be used as a time share as defined by the Town Code.

The respondent, Gary Cantor was present and was represented by Robert and Linda MacLaren, attorneys at Osborne & Osborne, P.A. Atty MacLaren cited that a memorandum was distributed to both the Special Master and Atty Spillias. Atty MacLaren stipulated that notice of hearing was received, that Mr. Gary Cantor was the owner and also that the property is zoned residential single family. Special Master Torcivia determined that proper notice had been given for the meeting.

Special Master Torcivia accepted the following Town exhibits: the Affidavit and Notice of Violation as #1; the Code Enforcement Receipt of Delivery regarding the rescheduling of the meeting until March 14, 2005 as #2; a Town print out providing information regarding the permit applied for as a Single Family Home as #3; the print out from the

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Property Appraisers Office showing ownership as #4; the Town's current zoning map as #5; and the internet information obtained about Abercrombie & Kent as #6. He also acknowledged receiving copies of Ordinance 229, 345 and the cited sections of the code. Special Master Torcivia advised that due to the amount of paperwork he would review the evidence and come back for a subsequent meeting. Atty Spillias also mentioned the administrative cost recovery costs and it was mutually decided that there would be a hearing on it if the Special Master did find that there was a violation.

Special Master Torcivia accepted the following Respondent exhibits: a memorandum from Sgt. Eubanks to Lt. Katz regarding a vehicle registration to an owner out of Deerfield Beach as #1; and another printout of a vehicle registration to an owner from Boca Raton with a note regarding insurance information as #2.

Atty Spillias advised that the Town became aware that the respondent has a contractual agreement with Abercrombie & Kent to utilize the property as a private club classified as a destination home venture for club members who pay a fee for a short stay of a week (+/-). He added that the residence has been utilized in this manner for several months and it is the Town's position that this violates the sections of the code cited, violates the zoning provisions because all commercial uses have been amortized out a long time ago and the property is residential single family and has always been. He summarized the Town's position by stating that the property was being utilized as a time share and a private club (but does not meet the requirements for a private club) and is also being used for commercial purposes.

Atty MacLaren commented that they did not contend that the property was residential single family and that the issue today was whether any codes were being violated because the home is still occupied as a single family home and not being used as a private club. He added that he did not feel the ordinances are applicable and therefore there are no violations.

Atty Spillias presented the Town's witnesses.

Lt. Katz testified as to the chain of events including: receiving the initial request by Director Hillery to investigate the alleged usage of the single family home through complaints from residents, to meeting with the respondent, speaking with Abercrombie & Kent representatives, and obtaining information about Abercrombie & Kent from the internet. He cited several dates where they made contact with various individuals at 46 Bimini Cove Drive over the course of a month that included 3 different guests (Laura Mayer, unknown gentleman and Valard Ross), the realty company (Lowry Realty), and the property manager (Jean Sisson). He was cross examined by Atty MacLaren.

There was a brief recess from 11:00 to 11:10 AM.

Karen Hancsak, Town Clerk, testified as to the current or past commercial uses being phased out on an amortization schedule as per the code requirements. She added that rental units were not considered commercial if they had a minimum 30 day rental. At

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this point Atty Spillias submitted a letter from 1999 from then Town Atty, Paul Nicoletti, addressed to another attorney representing the then owners of the Seaview Motel interpreting the code that any rental of residential units for 30 days or more to be "residential" use and not considered commercial. Atty MacLaren objected to the submittal of this document and after some discussion involving the two attorneys and the Special Master it was decided that the letter was accepted into evidence subject to allowing the respondent's attorney to respond to it or request a hearing by March 22, 2005.

Atty Spillias advised that the Town rests.

Atty MacLaren questioned Mark Veehan, 18 Eleuthera Drive, as a witness for the respondent. He testified that he is a friend of the respondent, lives around the corner and directly across the canal from the respondent, and walks his dog past the residence on a daily basis. He testified that the property is well maintained, there are no disturbances, and has never observed the residence being utilized as anything other than a single family use. Atty MacLaren questioned whether the witness observed any of the criteria set forth in Section 64-43 regarding private clubs to which the witness advised he did not.

Mr. Gary Cantor, respondent, advised that he currently resides at 7 Ocean Harbour Circle, Ocean Ridge and purchased the home at 46 Bimini Cove Drive in January 2004 as an investment. He added that he planned to fix up the residence and either sell it or rent it when he was approached by Abercrombie & Kent about leasing the property. He stated that he had investigated whether it was permitted by speaking with the Town Clerk in March 2004 and was told that there was no length of time a lease can be issued for and he then entered into a lease for 3 years (until 4/15/07). Atty Spillias cross examined the respondent.

Atty MacLaren called Linda MacLaren, who stated she was an attorney for 30 years and provided her credentials. She advised that there were no declarations recorded for the subject property.

Atty MacLaren called Kurt Strauss, the general manager for Abercrombie & Kent for the Palm Beach County area, who advised that he was in charge of their fiscal assets which included 46 Bimini Cove Drive. He commented that Abercrombie & Kent was considered a destination club whereby the members pay a one time membership fee, an annual fee and subsequent fees for additional amenities. He added that the members go through a rigorous background check and the residences are never offered for use by the general public and any special functions must be pre-approved. Atty MacLaren questioned whether the residence met any of the criteria of Section 64-43 to which he was advised that it did not and was not a private club. Atty Spillias cross examined the witness.

Special Master Torcivia questioned Mr. Strauss whether there was a schedule for guests or how the guests get to the residence at 46 Bimini Cove Drive. He was advised that the member telephones Kansas City and obtains dates and there is a schedule but it can

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change. He also asked whether they book on an advance schedule to which he was advised not necessarily.

Atty Spillias asked to re-question Town Clerk Hancsak and asked her if she recalled the conversation with Mr. Cantor regarding time constraints and she advised that she did not recall the conversation. Atty MacLaren asked if the commercial section of the code pertained to motels to which she advised that primarily the rentals of the motels was what was discussed in the past.

Atty Spillias asked to re-examine Linda MacLaren and asked her if a lease could be written or oral to which she advised that less than one year could be oral.

After a brief discussion amongst the Special Master and attorneys there was a consensus for Atty MacLaren to advise the Town Clerk in writing by March 22, 2005 whether he would request a hearing regarding the letter submitted as evidence from then Town Atty Paul Nicoletti in 1999, briefs from both sides would be due by April 15, 2005, and responses would be due by April 25, 2005 and then additional meetings would be scheduled if necessary.

C. ADJOURNMENT

The meeting was adjourned at approximately 12:00 noon.

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Town Clerk