

MINUTES
TOWN OF OCEAN RIDGE
SPECIAL MASTER CODE ENFORCEMENT HEARING
July 5, 2005

Present: Karen Hancsak; Town Clerk, Lt. Stefan Katz, Sgt. Eve Eubanks, Chief Hillery and Kristin Bennett, Town Attorney.

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

Special Master Lara Donlon 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.

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

A. APPROVAL OF MINUTES FROM JUNE 7, 2005

Special Master Donlon approved the above referenced minutes.

Town Clerk Hancsak clarified that the cases referenced on the agenda were actually violation hearings. She added that CE #2005-53 has been rescheduled for another date.

B. VIOLATION HEARING

CASE NO. CE#2005-52 Dominic and Stephanie Graci, 14 Ocean Avenue, Ocean Ridge FL 33435

RE: Lot 4, Block 3, Boynton Beach Park Subdivision (14 Ocean Avenue)

NATURE OF VIOLATION

Violate Section 67-31(a) of the Town Code of Ordinances and 106.1.1 of the Florida Building Code by occupying a new building or part of a building prior to the Building Official issuing a Certificate of Occupancy

The respondents were present and represented by their attorney, Kory Veletean.

Town Atty Bennett summarized the violation.

Special Master Donlon accepted the following Town exhibits: the Notice of Violation/Affidavit which included the delivery receipt, witness statements, copies of various codes, a letter from the respondent dated 5/27/05, a letter from the Town dated 5/27/05, a letter with a hand written notation from the Town dated 5/27/05 as #1, Supplement Incident Report dated June 2, 2005 and June 10, 2005 as #2, a copy of a Correction Notice from PBC Building Dept. dated 5/28/05 along with a hand written note from Sgt. Hallahan dated 5/28/05 attached as #3, a copy of the Certificate of Occupancy

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dated 6/17/05 as #4, and the Recovery Calculation Worksheet in the amount of \$684.70 as #5. She also read the witness statements into the record.

Special Master Donlon accepted the following Respondent exhibits after an objection by the Town because it was the first time the Town had seen the documents and they had no ability to question them: a notarized Affidavit from the respondent's mother's neighbor and the respondent's mother regarding the respondents residing in the mothers residence until after a business trip in June 2005. She also read the two affidavits into the record.

Sgt. Eubanks testified and was cross examined regarding her preparation of the Affidavit and Notice of Violation and vehicles observed and the work hours permitted in the Town.

Town Clerk Hancsak testified and was cross examined in regards to her witness statement. She stated that on June 15th she discovered that a Certificate of Occupancy (CO) had still not been issued by the County after she had previously called and advised to release the Town hold. Upon calling the inspection department it was discovered that the septic system did not receive final approval, thus the hold on the CO. She added that Mrs. Graci happened to call the same morning and she advised her of the septic system not receiving final approval. She testified that that was the last conversation she had with the Graci's or the County other than through the Deputy Clerk when a copy of the CO was issued while she was attending a conference. Atty Veletean questioned whether a temporary CO was issued to which the Town Clerk advised she was never given a copy. Atty Veletean also asked if the Town Clerk was personally aware of the Gracis residing in the residence to which she advised she was not.

Commissioner Betty Bingham testified as to the contents of her witness statement and was cross examined by the respondent's attorney. Atty Bennett questioned whether she observed any activity prior to May 27, 2005 to which Comm Bingham advised that she did not observe any activity before 8 AM or after 10 PM. Atty Veletean questioned the duties of a Commissioner. After an objection that was overruled by the Special Master, Comm Bingham advised that one of the duties of a Commissioner was to be observant as to any matters involving the Town and bring out of the ordinary matters to the Town Manager or Town Clerk's attention.

Lt. Katz testified and provided his credentials. He advised that he first heard of the case on 5/27/05 when he was in the room while the Town Clerk was having a telephone conversation with Mrs. Graci. He stated that the Town Clerk had advised Mrs. Graci that she did not have a CO and the possibilities that may occur if the code is violated. After the telephone conversation ended he contacted Chief Hillery who advised that if the respondents did violate the code they would be written up for a code enforcement violation which ultimately occurred. He then stated that on 6/9/05 in the early AM, he responded to the Graci residence, along with Sgt. Hallahan, to determine if they indeed did move into the residence. He stated that after ringing the doorbell Mrs. Graci invited them into the residence and during a conversation Mrs. Graci stated to him that she had just gotten out of the shower. He stated that during the conversation she advised that she had moved in on 5/28/05 and stayed there until 5/30/05 and returned on 6/9/05 and had

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been living there since. He added that Mr. Graci was also present during part of the conversation. Atty Bennett questioned whether he advised the respondents of the violation to which he advised that he did not because Mrs. Graci advised him that all outstanding matters were taken care of and she was within her right to stay there. He added that he observed furniture in the residence. He stated that he then proceeded to the Clerk's Office and was informed that a CO had still not yet been issued. Atty Veletean cross-examined Lt. Katz regarding the furniture and asked whether other officers had observed signs of his clients residing in the residence. He stated that they had observed lights being on and off and noticed that vehicles had been moved prior to 6/9/05 which prompted him to obtain a specific statement from the respondents. Atty Veletean asked Lt. Katz to describe the inside of the residence to which he advised that there were marble floors, a large open foyer area, a kitchen close to where the door was but he did not pay specific attention to the furniture inside. Atty Veletean questioned whether Lt. Katz observed any signs independent of Gracis alleged statement to support that they were residing in the residence to which Lt. Katz advised that he observed furniture.

Sgt. Hallahan testified that he accompanied Lt. Katz to the residence on 6/9/05 and reiterated Lt. Katz's comments upon how they entered the residence and was advised by Mrs. Graci that she had moved in on 5/28/05 and left on 5/30/05. He added that he observed some furniture and some bedroom furniture in a room he believed located to the left. He added that on 5/28/05 Mrs. Graci came into the police station and produced Town exhibit #3. He stated he telephoned the Town Clerk who advised that based on the document description it was not a temporary CO and they could not move into the residence. He added that Mrs. Graci then told him that she had to do what she had to do as she had been living in a hotel. Atty Veletean asked Sgt. Hallahan to elaborate on how he determined that the residence was being lived in to which he advised that it appeared lived in with the comments about the shower, the kids being there and the furniture. When asked if he observed pots/pans or groceries he stated he did not. Atty Veletean commented that while the Town employees state that the Gracis advised them they were residing in a hotel they were actually staying at the home of Mr. Graci's mother as provided in the Affidavit.

At the request of Atty Veletean Commissioner Bingham was requested to provide additional testimony on whether she had noticed mail being delivered, the cable company or trash being picked up. She advised that she did not.

Atty Bennett recalled Town Clerk Hancsak and verified that trash pick up does not commence until after a CO has been issued.

Atty Veletean asked if there would objections to asking the mother of Mr. Graci to appear. Atty Bennett objected citing no reason for a time delay when the affidavit was already accepted.

In closing Atty Bennett stated that based on the written statements and the testimony of those present at the meeting the Town would seek recovery of the administrative costs in

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the amount of \$684.70 and a \$250 daily fine starting from the day of violation in hopes to deter future violations from other violators.

Atty Veletean stated that the witness statements advising that lights were on and vehicles were there at night did not prove that the respondents were occupying the residence. He stated that he felt the testimony by the Town Clerk was not relevant because her testimony was prior to the alleged occupancy of the residence. He mentioned the affidavits provided by the respondent's mother and neighbor advising that the respondents lived with the mother. He concluded by stating that nothing has been provided to establish that the residence was occupied by the respondents.

Atty Bennett argued that the Town Clerk's testimony was relevant in that she provided in her statement and verbally that notice was provided to them that they cannot reside in the residence until at least a temporary CO was issued. She added that the affidavits provided by the respondents were here say and that Mrs. Graci admitted to the officers that she was living there.

Special Master Donlon questioned that if the Notice of Violation was issued on the 10th of June what proof is provided that the violation existed before that in the notice. Atty Bennett advised that the first paragraph reflects May 28th.

Atty Veletean argued that the Notice of Violation in paragraph 5 provides that if found in violation fines could be levied for every day that any violation continues beyond the date set in an order but the respondents received their CO on June 17, 2005.

Atty Bennett advised that on many occasions violations have been brought into compliance prior to a hearing and was still requesting a Finding of Violation from May 28, 2005.

Special Master Donlon advised that she would accept briefs from both parties by July 18, 2005 relating to the authority to impose a fine for any time prior to the Notice of Violation. She added that she would give a ruling and if she does find a violation the administrative costs could be recovered and fines could be assessed at a Fine Assessment Hearing on Aug. 2, 2005 at 10 A.M.

D. ADJOURNMENT

The meeting was adjourned at approximately 12:10 AM.

Town Clerk