

MINUTES
TOWN OF OCEAN RIDGE
SPECIAL MAGISTRATE/CODE ENFORCEMENT HEARING
Jan. 03, 2012

Present: Karen Hancsak; Town Clerk, Keri-Ann Baker, Town Atty., Sgt. McAllister, and Lt. Hutchins.

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

Special Magistrate 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 intending on providing testimony were sworn in.

A. ADOPTION OF DECEMBER 6, 2011 MINUTES

The minutes were adopted.

B. FINE ASSESSMENT/STATUS HEARING

CASE NO. CE# 2011-014 Wilson Wengert, 6 Sabal Island Drive, Ocean Ridge FL 33435

RE: Lot 6, McCormick Mile Subdivision (6 Sabal Island Drive)

NATURE OF VIOLATION

Violate Section/s 34-6(2) of the Town's Code of Ordinances by allowing rubbish, dead vegetation, wood boards, chain link fencing, and other debris on property

The Respondent was not present.

Atty Baker summarized the violation and advised that it still exists. She stated that the Town was recommending that the Special Magistrate find that there was proper notice, that the property was still in violation, and that a \$50 daily fine be assessed to the property until full compliance.

Special Magistrate Donlon accepted the following Town exhibits: A copy of the Final Order and Mailing Receipt/Track and Confirm from the Post Office as #1; 3 pages of photographs taken today by Sgt. McAllister as #2; and the Administrative Recovery Sheet in the amount of \$338.77 as #3.

Special Magistrate Donlon stated that she did find there was proper notice and that the violation continues to exist past the Dec. 16, 2011 compliance date. She stated that she

would order a \$50 daily fine assessed from Dec. 17, 2011 until compliance, and also include that the Administrative Costs for this hearing (\$338.77) and the Dec. 6, 2011 hearing (\$354.75) be paid immediately and can be included in the lien.

**C. VIOLATION HEARING
CASE NO. CE#2011-015**

**Keith McDonald, 107 Bonito Drive, Ocean Ridge, FL 33435
RE: Lot 107, McCormick Mile Addition No. 1 (107 Bonito Drive)**

NATURE OF VIOLATION

Violate Section/s 34-1, 67-50, 67-51, 67-17(a), 67-174(a) of the Town's Code of Ordinances by allowing installation of fencing to be installed without permits, installation of plumbing, installation of an electrical pump, temporary electrical cord hook up, and the installation of six bait tanks on the property

The Respondent was present.

Atty Baker shared all of the intended Town exhibits with the Respondent prior to summarizing the violations that the 6 tubs that contained water and baitfish created. She cited the code sections that the respondent had violated including 67-51, 67-174(a), 34-1, and 64-50. She stated that the fencing erected without a permit (67-51) has been removed correcting that portion of the violation. However, she stated that this section of the code (67-51) had additional violations including required permits for the plumbing and electrical work. She commented that the sheer amount of tubs creates a nuisance and blighting concern and also raises a question whether there is a possible commercial use. She concluded by stating that at a minimum the tubs encroach into the setback areas and the work has not been permitted, however; the respondent has agreed to shut down the system at this time. Also the Town is unsure whether other agencies such as the Department of Environmental Protection or Aquaculture would require permitting as no further contact has occurred with the respondent.

Special Magistrate Donlon accepted the following Town exhibits: the Affidavit of Service with the Property Appraiser Print Out, copies of affected Town Codes, and the overview picture as Composite #1; the 3 pages of photographs taken on 11/16/11 as #2; the 3 pages of photographs taken on 1/3/12 as #3; and the Administrative Recovery Sheet in the amount of \$418.90 as #4.

Sgt. McAllister testified that he observed and took photographs of the fencing and tubs on 11/16/11 and it was further observed on 11/17/11 that a pump was installed on the seawall with piping running to it from the ICWW. On 11/22/11 he spoke with Mr. McDonald and advised him of the violations, prepared an Affidavit and Notice of Violation for mailing, and also posted the property. He added that on 11/30/11 a meeting took place with staff and Mr. McDonald and he was advised of the options to come into

compliance. He also testified that he observed and took photos today showing that the fence was taken down but all else remains the same.

Town Clerk Hancsak testified that a meeting was held on 11/30/11 attended by the Town Clerk, Lt. Hutchins, Sgt. McAllister, and Manny Palacios, Zoning Official. Mr. McDonald was advised that at a minimum the fence and tubs, with plumbing and electrical, have been placed there without permits and are in the setback areas. It was also discussed that prior to any Town permit being issued Mr. McDonald would need to provide either an exemption or the proper permitting from any of the required environmental agencies such as FDEP or the Dept. of Aquaculture. She stated that he advised staff that the tubs were only used by himself or his friends for sport fishing and were not there for any commercial purpose to which Lt. Hutchins advised that they still possibly may be considered a nuisance. She concluded by stating that she advised Mr. McDonald that if it was necessary for him to appear at the hearing he should prepare a timeline of the steps taken to correct the violation.

Atty Baker stated that the as built tubs with the plumbing and electric could not remain because of the setback requirements and even if they are moved there may be other nuisance violations in the future. She recommended that the property be found in violation, the condition corrected, and recovery of the administrative costs.

The Respondent, Mr. McDonald, commented that his first contact with Sgt. McAllister was just prior to the Thanksgiving holiday and he promptly had 2 of his friends shut off the bait tubs and it has not been operational since. He agreed that he met with staff and they outlined the violations. He has since removed the temporary fencing and has been in contact or has left messages with the FDEP, Dept. of Aquaculture, and South Florida Water Management (SFWM). He stated that SFWM advised it was not their jurisdiction and the Dept. of Aquaculture faxed a letter stating that provided the bait wells are used solely for personal purposes they did not require a certificate and he was still awaiting a reply from the FDEP. He added the FDEP was supposed to meet on 12/22/11 to discuss the matter but he has not heard anything yet. He concluded by stating that he moved to the residence and wanted the bait wells because he is an avid sport fisherman and his boating friends could also benefit from the location of the bait wells and it would not be commercial.

Special Magistrate Donlon accepted the following Respondent exhibits: the e-mail chain as #1; and the faxed letter from the Dept. of Aquaculture as #2. She also acknowledged his testimony that he still has not received a response from the DEP but they were supposed to have a staff meeting regarding the issue on 12/22/11.

Atty Baker commented that the Town was not aware of his testimony and were impressed with his work thus far and as such was proposing not requiring the removal of the tubs, piping and electrical as of yet but that the system remain shut off. She also requested that he be found in violation, permit 60 days for compliance, provide status updates, and reimbursement of the administrative recovery costs.

SPECIAL MAGISTRATE CODE ENFORCEMENT HEARING OF JAN. 03, 2012

Mr. McDonald questioned why the Town would not accept the determination from the Dept. of Aquaculture to which he was advised that FDEP has still not provided their exemption or approval.

Special Magistrate Donlon stated she did find there was proper notice and did find that the respondent violated the cited code sections. She stated that her Final Order would require compliance within 60 days (3/3/2012), written status updates before the 15th and 28th of January and February, 2012, and payment of administrative recovery costs in the amount of \$418.90 within 10 days. Failing the above could result in daily fines up to \$250. A Fine Assessment/Status Hearing will be held on March 6, 2012 if necessary.

D. ADJOURNMENT

The meeting was adjourned at approximately 11:05 AM.

Town Clerk