

MINUTES  
TOWN OF OCEAN RIDGE  
SPECIAL MAGISTRATE/CODE ENFORCEMENT HEARING  
November 5, 2013

Present: Karen Hancsak; Town Clerk, Town Atty Kathryn Rossmell and Tara Duhy, Lt. Hutchins, and Officer Kurz.

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

Special Magistrate Barbara Alterman 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 or Order of Assessment.

At this point all individuals intending on providing testimony were sworn in.

**A. ADOPTION OF JULY 2, 2013 MINUTES**

The minutes were adopted.

**B. VIOLATION HEARING  
CASE NO. CE#2013-017**

**James Many, 19 Harbour Drive North, Ocean Ridge FL 33435**

**RE: Lot 23, Ridge Harbour Estates (19 Harbour Drive No)**

**NATURE OF VIOLATION**

Violate Sections 62-51 of the Town's Code of Ordinances by allowing the permanent docking of a vessel to the pier **not** owned by the owner or resident of the dwelling unit of which the pier is an accessory use

The Respondent was present and was represented by Atty Robert Gusrae.

Atty Rossmell summarized the violation stating that the code section cited does not permit the permanent docking of a vessel not owned by the owner. She stated that Officer Kurz hand delivered the Affidavit and Notice of Violation on Oct. 4, 2013.

Lt. Hutchins testified that in January 2013 a complaint was lodged reference the mooring of the vessel, Predator, registered to James Ofstein at the respondent's property. Officers explained to the respondent that the vessel would need to be moved or provide proof that he was a registered owner of the vessel. Lt. Hutchins stated that he met with Mr. Ofstein who advised that he would re-title the vessel but he was advised that the vessel needed to

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be removed until then. The vessel was removed for a period of time but it is now back at the property and the title still does not reflect that Mr. Many is part owner.

Officer Kurz testified that he observed the vessel again on Aug. 26, 2013 while conducting a Dark House Check (DHC). He explained that a DHC was a residence that is physically checked by the officers while the residence is vacant (no owner or guest), at their request. On Sept. 20<sup>th</sup> he noticed that the vessel was gone but it was again moored on Sept. 30<sup>th</sup> which resulted in the Affidavit and Notice of Violation.

Special Magistrate Alterman accepted the following Town exhibits: the Affidavit and Notice of Violation with the Property Appraisers Owner Sheet, appropriate code section, and hand delivery receipt as composite #1; the Police Report and 3 pages of photographs taken on Nov. 5, 2013 from the neighbors property as #2; and the Administrative Recovery Sheet in the amount of \$335.71 as #3.

Atty Rossmell requested that it be determined that proper notice was given, the violation still exists, 7 days for compliance, reimbursement of the administrative costs, and also that future violations be considered repeat violations. She also requested time for rebuttal.

Atty Gusrae read sub-section (e) of Section 62-51 which provides an exemption for a permit. He and his client's contention is that Mr. Ofstein is a guest (he read the definition of guest, dock, and accessory use as defined in Section 1-3) using the dock to dock his boat based on the definitions as read.

Atty Gusrae also stated that back in January Mr. Ofstein wrote a letter stating that Mr. Many had an interest in the boat. He stated that the Town has the original signed letter. He added that Mr. Many personally owns the props and though it is not titled in his name he has an equity interest in the boat. He felt the equitable interest should be sufficient as proving him part owner of the boat. He added that there is a form available at Town Hall for registering vessels parked on the beach but no form available for vessels at docks. He stated his client meets the code requirements through the Town's own definitions and that they could amend the code in the future so as not to permit these types of situations.

Special Magistrate Alterman accepted the following Respondent exhibits: a Parking on the Beach Town Form as #1; an unsigned letter from Mr. Ofstein acknowledging the respondent had a equity interest in the vessel, Predator as #2; and a page containing 8 definitions in the Town's Code of Ordinances as #3.

Town Clerk Hancsak testified that she was not aware of any signed letter from Mr. Ofstein. Atty Gusrae questioned whether she would know if the police dept. lost the letter to which she advised she would not. Lt. Hutchins also testified that he had not seen a signed copy of the letter and that he only saw the facsimile of an unsigned letter.

Atty Rossmell stated that a person is a guest, not a boat, and that Atty Gusrae's interpretation would permit anyone to moor a vessel at a dock with or without the

owner's consent. She also stated that there is no legal documentation that the respondent is part owner of the boat.

Special Magistrate questioned who on the Town staff is responsible for interpreting the codes to which she was advised that it would be the Town Manager. It was pointed out that in the Police Report that Town Manager Schenck met with the respondent and advised them that until the registration indicates that Mr. Many is an owner the docking of the vessel is a violation of the Town Code.

Town Manager Schenk was brought in, sworn in, and testified that his interpretation was that a guest is person using or occupying a residence, not a boat.

Special Magistrate Alterman stated that she did find there was proper notice and that she did find that there is a violation. She stated the Final Order would be prepared requiring compliance within 7 days (11/12/13), failing which a 50.00 daily fine would commence until brought into compliance, along with the reimbursement of administrative fees in the amount of \$335.71 to be paid on or before Nov. 12, 2013, and future violations of Section 62-51 shall be considered repeat violations under Ch. 162, F.S. She added that a Fine Assessment Hearing would be scheduled for Dec. 3, 2013 at 10:00 AM if necessary.

Atty Gusrae requested a "Stay" regarding enforcement pending appeal to which Special Magistrate Alterman stated if he received a "Stay" from the Appellate Court they could Stay the proceedings but she would not "Stay" them at this time.

**C. ADJOURNMENT**

The meeting was adjourned at approximately 10:50 AM.

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Town Clerk