

Mayor David Browning, Seat 4  
Vice Mayor Jim Rockett, Seat 2  
Councilman Tom Goltzené, Seat 5  
Councilman Ronald. D. Jarriel, Seat 1  
Councilman Ryan Liang, Seat 3



**Town of Loxahatchee Groves**  
**Special Magistrate Hearing**  
**Wednesday, January 16, 2013 at 10:00 a.m.**  
Central Palm Beach County Chamber of Commerce,  
13901 Southern Blvd., Loxahatchee Groves, Florida 33470

Special Magistrate, William Doney

Town Manager, Mark Kutney  
Town Clerk, Susan Eichhorn  
Code Enforcement, Tew & Taylor, Inc.

**MINUTES**

**1. CALL TO ORDER**

Special Magistrate William P. Doney called the meeting to order at 10:00 a.m. Present were Town Manager Mark Kutney, Town Attorney Mike Cirullo, Town Clerk Susan Eichhorn, Planning Associate Braeden Garrett, Beverly Tew, President of Tew & Taylor, Inc., Code Enforcement Officer Russell Elgin, Seth Brier, and Attorney Jeff Brown (via speaker phone), representing Elaine Smiley and Seth Brier.

**2. SWEARING IN OF ALL WITNESSES**

Special Magistrate Doney administered the oath to all witnesses.

**3. FINE/LIEN CERTIFICATION - None**

**4. ORDERS OF VIOLATION/CONTINUANCE**

**a. Case 2012-277 Town of Loxahatchee Groves Florida (Petitioner) vs.  
Elaine Smiley (Continuance)**

PCN: 41-41-43-17-01-804-0040

Location: 556 B Road

Violation: Unified Land Development Code Article 20: Residential Zoning Districts;  
Section 20-015

Non-permitted use of property located in the Agricultural Residential Zoning District. Property is being used for retail sales / commercial activity.

Violation: Unified Land Development Code Article 5: Administration and Legal Provisions; Section 05-040; Permits Required; Expiration of Permits and Development Orders

Pole barn type structure erected without a Zoning Permit.

Town Attorney Cirullo advised that at the last meeting there was a witness who wanted to testify, and the Town went through its case, and the case was then continued. The reason it was continued was that the petitioner/respondent indicated they were going to file some applications with the Town to resolve the matter and bring conformity to the property. At the last meeting we did not seek an order, but we needed to put our case on because we had witnesses that were present. Late yesterday, the applicant provided a letter from a retained land planner, who was going to get the ball rolling on this matter. Due to the lateness of receipt of this letter, we had indicated that we would expect that they would make a request this morning to continue the case.

Attorney Jeff Brown asked the court to accept the letter from the land planner, and requested a continuance for 60 days. He stated that he learned that the land planner preferred a 60 day continuance, so as to not come back in 30 days and take up more time. Mr. Brown said that he would personally advise the land planner of whatever the Magistrate will consider to be a reasonable request, noting that this is not the first time a continuance has been requested, and that the Town needs to move forward.

Town Attorney Cirullo responded that the Town would not object to a 30 day continuance and the he did not believe that 60 days would be appropriate. This issue needed to move forward, and it was expected that a continuance would involve getting an application filed with the Town that documents or has information for each element of the application, before the next hearing, and at that time we can consider moving this back. We have already had 90 days to move this, and we would expect to see some real progress in the next 25-30 days. It would be our position that we do not want to be dealing with getting something the day before a hearing. If we don't hear from them on the Friday before the next hearing, we will not consider any further continuances; whatever the Special Magistrate ordered today would be followed.

Attorney Brown stated that he had no objection to anything said by Attorney Cirullo.

**Special Magistrate Doney read a letter dated January 15, 2013, from Urban Design Kilday Studios into the record, and identified it as Exhibit 8, and admitted it into evidence. (attached to these minutes)**

Special Magistrate Doney asked if this would require a land use amendment.

Town Attorney Cirullo replied that it was. The respondent would like to bring the land use in conformity with what is going on with the property. We are willing to work to allow them the opportunity to go that route, but we need to see some progress. It would be small scale amendment, however, the Town is now in a moratorium, and the soonest we could take action on it would be April, but even on that timeline there would need to be a

review by our planner, comments that would need to go back and forth, etc. We want a complete application that we would expect any developer/landowner to file. And we would put it under new business as soon as the moratorium ends, March 31, 2013. As part of the application, there is cost recovery, but that does not need to be addressed at this meeting. That will be part of the application fee. I do not know what that number is, I am just putting it on the record. That is standard operating procedure.

Seth Brier: We have a lot of money tied up in this, and our land planner is completing surveys, and coordinating the property for commercial and a portion for agricultural use. There is a lot of money tied up in structures, and that is why we needed more time. Today is the first time that I found out that the moratorium is lifted in April, and then we need to know what a fee schedule is so that we can get things accomplished.

Special Magistrate Doney stated that the Town wants to see this move along. However, it doesn't seem that, maybe other than the application, there will not be a whole lot accomplished within the next 30 days.

Town Attorney Cirullo responded that is why we want to only continue this until the next hearing, awaiting the application. If we do not get that we do not want to continue this anymore. If they are not going to be diligent in pursuing the option they want to pursue, we do not want to continue the hearing again.

Special Magistrate Doney stated that he was inclined to postpone to the February 20, 2013 Special Magistrate Hearing, and with the condition of having a complete application with all fees paid by Feb. 15, 2013.

Town Manager Kutney advised that the cost recovery usually comes along with the application. He would try to have that number available to Mr. Brier by Friday; he noted that it would most likely be between \$5,000-\$10,000.

Town Attorney Cirullo stated that we are concerned about whether there may need some variances, and the uses that are involved. It is kind of complex, and that is why it is critical that the sooner we can get something from them so that our planner can get involved and figure out the scope of this application, we will have some idea of how expensive it will be. That was what we needed to have all along, the initial step, and what that entails. We have to figure out what they need to ask the Town for; we need to get something from them by February 15, 2013.

Seth Brier: Once the application is submitted I would like as accurate a fee schedule as possible; our application will be sitting dormant and our money will be sitting dormant. If we can get our application filed and then get a fee schedule of 30-35 days to get that paid, the moratorium should be ended.

Town Manager Kutney stated that it would not be a fee schedule; it would be an estimated fee that will accompany the application, and would include any costs that we would incur as a part of processing that application.

Bev Tew: Reminded Mr. Brier that every time we come into a meeting and the meeting is continued, there are still costs that are being concurred, and those will become part of an administrative fee that will also need to be paid. It behooves you to get the application in as soon as possible.

Town Attorney Cirullo stated that they need to figure out what should be included in the application based on what they intend to do with the property. They have to tell us what they are asking for.

Attorney Brown: Thank you for letting me attend by telephone and we will comply with what the city is asking.

**Special Magistrate Doney's Findings:** advised that this matter would be continued to the February 20, 2013, Special Magistrate Hearing, with the proviso that the alleged violator is required to submit whatever land use applications, including fees, by February 15, 2013, or the matter will proceed with a hearing on February 20, 2013. The alleged violator must file whatever is necessary to proceed with the necessary land use approvals to convince the Town that the applicant is moving forward by February 15, 2013, I will enter an order to that effect, and if the application is not in, or the Town does not acknowledge that the applicant has made a good faith effort by the February 15, 2013, then we will consider the matter at the February 20, 2013 Special Magistrate Hearing.

In response to Mr. Brier's request regarding the fee schedule, Town Attorney Cirullo advised that the Town will not consider anything until it gets a deposit. The Town will not begin to incur expenses unless it has some deposit.

Special Magistrate Doney requested that the Town get an estimate on the deposit before there is an application; Town Manager Kutney replied that staff could get that by Friday.

Special Magistrate Doney replied that he would get the order out, and obtain the address of Attorney Brown so that he would receive a copy. He stated that if this case was continued, and Mr. Brier had applied, then the process needed to work itself out.

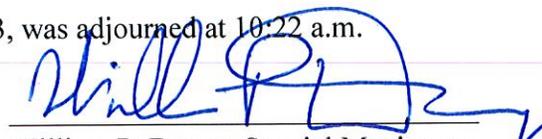
5. FINE REDUCTION HEARINGS – *None*

6. STATUS UPDATE - *None*

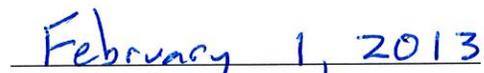
7. ADJOURNMENT

The Special Magistrate Hearing of January 16, 2013, was adjourned at 10:22 a.m.

  
Susan Eichhorn, Town Clerk

  
William P. Doney, Special Magistrate

(SEAL)

  
Date Signed



January 15, 2013

Mr. Seth Brier  
556 B. Road  
Loxahatchee, FL 33470

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Urban Planning and Design  
Landscape Architecture  
Communication Graphics

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Re: Loxahatchee Property Commercial Land Use Amendment

Dear Seth:

I am in receipt of your two property surveys totaling 15.5 acres. As we discussed, the challenge now is to determine a configuration which provides for two lots, one of which will be the subject of a less than 10 acre land use amendment to be processed by the Town of Loxahatchee. In creating these lots, both the potential commercial lot and the remaining agricultural lot will need to meet all property development regulations including minimum lot size and dimensions as well as making sure that any structures meet all required setbacks from the new lot lines. Finally, we need to determine which structures are to be located on each lot, with the commercial lot containing those structures which will have commercial uses and the remaining lot only containing structures permitted in the agricultural zoning district which includes a single-family home as well as bona fide agricultural use buildings. As each of the two properties currently contain single-family homes, you will need to determine which home will be retained for residential purposes and which home will either be eliminated or modified to allow for commercial uses. Having reviewed the surveys, this is not going to be an easy task due to the location of the existing buildings.

My suggestion is that we meet on site to review the various options prior to my suggesting the best layout. Secondly, before submitting a Land Use Amendment with the Town, we should then meet with Town staff as a pre-application to review your proposed re-subdivision of the properties and determine that they are in agreement that the changes will result in a path to obtain the approvals you will need from the Town.

Please call me if you have any questions.

Sincerely,  
**URBAN DESIGN KILDAY STUDIOS**



Kieran J. Kilday

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EX B - Admitted