

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, February 20, 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, Attorney Jeff Brown, 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**

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 explained that at the last hearing, it was agreed that this matter would be continued, in order to provide some time for the respondent to forward some applications to the town. As of last Friday, the Town had received an application that was in response to each of the items, however that was not sufficient.

Attorney Jeff Brown requested consideration for a continuance for thirty days, in order to allow Mr. Brier to hire a professional planner, and explained that the respondent was asking for two things: To retain a land planner and meet with the Town within the next thirty days. The respondent would submit the \$7,500 application fee, and the Town would allow the respondent to proceed and meet with a retained land planner in thirty days.

Attorney Cirullo replied that the Town needed to see an application last Friday, and that the respondent had been provided with a letter yesterday with the Town's review of the application and what was sufficient and what was not. He reviewed the letter and entered it into the record as Town Exhibit 9.

Attorney Cirullo objected to a continuance, and suggested that the respondent review what he was expecting to do in the next thirty days.

Attorney Brown reviewed what the respondent expected to do. He submitted into evidence Respondent's Exhibit 1 – Palm Beach County Local business Tax Renewal Notice for Seth Brier for a Variety Store.

Special Magistrate Findings: Denied request to continue the hearing. He explained that a very minimal application had been filed and the fee was not submitted at that time. His concern was that it was not moving forward from the notice of violation. He stated that at the last hearing, the Town had rested, so now the respondent could present.

The respondent presented his response.

Special Magistrate Doney asked if it was his position that he was grandfathered, or was it his position that he needed to get the commercial designation so that his operation was legal under Town zoning.

Mr. Brier replied that he felt that he was grandfathered, and did not believe there was a violation; that he had been licensed since 2004, and had paid \$30,000 in licensing fees; that he had been licensed for several years with Palm Beach County, and then the Town took over. He submitted into evidence the hearing from the Southern Boulevard Workshop, where he maintained that it was stated by the Town Planner that any uses that were in place before the Town became a town were still in place. Respondent's Exhibit 1 – Palm Beach County Local Business Tax Renewal Notice for a Variety Store, was submitted into evidence

Town Attorney Cirullo stated that all Business Tax Receipts are payment of a tax to do business, but they would not give a right to do business wherever it is; the businesses must fit the zoning code. The respondent had a burden to prove that the uses he had on the property were allowed on that property under Palm Beach County zoning codes. He cited case law – Town of Lauderdale-by-the-Sea v. Meretsky. The Special Magistrate stated that he would admit it into evidence.

Attorney Brown continued to present the testimony of the respondent.

Ms. Tew provided Town Exhibit 11 - Article 75 of the Town ULDC.

Town Attorney Cirullo stated that the Town did not agree with the request for continuance, because it had presented its case, and the respondent has had an opportunity to present. The Town believed that it

is now time to bring this matter to conclusion and to get the Special Magistrate's order one way or the other.

Special Magistrate Doney asked if Mr. Brier had the licenses and Business Tax Receipts from Palm Beach County with him.

Town Attorney Cirullo stipulated that Mr. Brier had licenses and Business Tax Receipts from Palm Beach County.

Special Magistrate asked if the respondent wanted him to see the video of the Southern Boulevard Workshop, referencing the statement made by Town Planner Fleischmann.

Town Attorney Cirullo stated that he would not object to the portion showing the Town Planner comments and that he would not object to having the entire video made into evidence, however, he did not think that the entire two hours of the meeting needed to be viewed at this hearing.

Attorney Brown replied that was acceptable, and requested that the Special Magistrate view the video, and submitted as Respondent Exhibit 2, the video from the Southern Boulevard Workshop held on February 14, 2013.

Special Magistrate Doney stated that he would view the video admitted into evidence on his own, and that the video was admitted into evidence and would be part of the record.

Attorney Brown continued with the testimony of the respondent.

Town Attorney Cirullo submitted into evidence Town Exhibit 11, the Notice of Violation and Notice of Hearing dated April 28, 2009, March 12, 2009, January 14, 2009 and Citizen Complaint Log dated December 5, 2008.

The respondent requested copies of the Town Council minutes referred to earlier. Town Attorney Cirullo stated that he would work with Attorney Brown, and that he was offering the respondent the opportunity to get the minutes the respondent identified. Town Attorney Cirullo stated that he would give the respondent until March 1, 2013 for that purpose.

Attorney Jeff Brown submitted into evidence a map of the Town as Respondent's Exhibit 3.

Mr. Brier stated that it was his intention to call witnesses to provide testimony. Special Magistrate Doney stated that subpoenas would have had to be issued to have them here today, and they were not here, and that the hearing needed to move on.

Attorney Jeff Brown submitted into evidence Respondent's Exhibit 4, the application check of \$7,500, and Respondent's Exhibit 5, the application submitted to the Town on Friday, February 15, 2013.

Attorney Jeff Brown called Town Manager Kutney as a witness and proceeded to question Mr. Kutney.

Town Attorney Cirullo then questioned Town Manager Kutney, and submitted into evidence as Town Exhibit 12 – Property information from Palm Beach County; Town Exhibit 13 – email from Palm Beach County Alan Seaman to Genni Messina dated December 12, 2008; Town Exhibit 14 – email from Matthew Lippman of Town of Loxahatchee Groves to Alan Seaman of Palm Beach County, dated December 11, 2008 relative to the BTR being signed in error by the Tax Collector's office.

Attorney Jeff Brown then called Town Planning Technician Braeden Garrett as a witness.

Attorney Brown then stated that the respondent rests.

Town Attorney Cirullo called Beverly Tew as a witness, and submitted into evidence Town Exhibit 15 – Town of Loxahatchee Groves Resolution No. 2009-010.

Special Magistrate findings: Directed Respondent to provide the relevant Town Council minutes by March 1, 2013 and the attorneys will give him a memo of law by March 15, 2013, providing case authority. Respondent would need to find the pertinent minutes, have them copied, and send them to the Special Magistrate. He stated that he will prepare the order.

In response to Town Attorney Cirullo, Special Magistrate Doney stated that a time frame with an appropriate time for any fine to be levied should be included as part of the memo of law provided by Town Attorney Cirullo. Town Attorney Cirullo stated that he would get the case law he had cited earlier in the meeting to Attorney Brown – Town of Lauderdale-by-the-Sea v. Meretsky, 773 So.2d 1245 (2000).

**b. 2012-311 Town of Loxahatchee Groves Florida (Petitioner) vs.
1930 D Road, LLC**

PCN: 41-31-43-17-01-115-0010

Location: 2374 A Road

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

Property is being used for chipping and mulching operation/commercial chipping and mulching without a permit

Special Magistrate finding: Continue this case to a date certain, of 2:00 p.m. on Wednesday, March 6, 2013. Beverly Tew will meet with the respondent next week to make every attempt to resolve the issue beforehand.

**c. 2012-319 Town of Loxahatchee Groves Florida (Petitioner) vs.
Mr. Gasper Morello and British Hay Company**

PCN: 41-41-43-17-01-807-0070

Location: 14955 Southern Blvd.

Violation: Unified Land Development Code Article 5:
Administration, Section 05-40

Property has had recent alterations without a permit

Violation: Unified Land Development Code Article 155: Site Plans,
Section 155-005

Development of property without approved site plan.

Violation: Unified Land Development Code Article 90: Signs, Section
90-15, 90-020, 90-025, and 90-040

Non-permitted signage on property

Violation: Palm Beach County Code of Ordinances Chapter 17:
Licenses, Taxation and Miscellaneous Business Regulations, Section 17-
17

Conducting a retail operation without an Business Tax Receipt (Business
License)

Ms. Tew stated for the record that the respondent had complied.

d. **2012-320 Town of Loxahatchee Groves Florida (Petitioner) vs. Mr. Gasper Morello and British Hay Company**

PCN: 41-41-43-17-01-807-0120

Location: 14981 Southern Blvd.

Violation: Unified Land Development Code Article 5:
Administration, Section 05-40

Property has had recent alterations without a permit

Violation: Unified Land Development Code Article 155: Site Plans,
Section 155-005

Development of property without approved site plan.

Violation: Unified Land Development Code Article 90: Signs, Section
90-15, 90-020, 90-025, and 90-040

Non-permitted signage on property

Violation: Palm Beach County Code of Ordinances Chapter 17:
Licenses, Taxation and Miscellaneous Business Regulations, Section 17-
17

Conducting a retail operation without an Business Tax Receipt (Business
License)

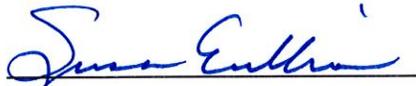
Ms. Tew stated for the record that the respondent had complied.

5. FINE REDUCTION HEARINGS - None

6. STATUS UPDATE - None

7. ADJOURNMENT

The Special Magistrate hearing of February 20, 2013, was adjourned at 1:12 p.m.


Susan Eichhorn, Town Clerk


William P. Doney, Special Magistrate

Date Signed: March 20, 2013

