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

Florida's Last Frontier
Town of
LOXAHATCHEE GROVES

# Town of Loxahatchee Groves

## Special Magistrate Hearing

## Wednesday, March 6, 2013 at 2:00 p.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 2:00 p.m. Present were Town Manager Mark Kutney, Office Coordinator Dennise Rodriguez, Beverly Tew, President of Tew & Taylor, Inc., Code Enforcement Officer Russell Elgin, and Respondents Jerry Hastings and Pat Hastings, 1930 D Road, LLC.

### 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. 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

**This case was continued from the Special Magistrate Hearing of February 20, 2013 to a date certain, of 2:00 p.m. on Wednesday, March 6, 2013. Beverly Tew was asked to meet with the Respondent to make every attempt to resolve the issue before the March 6, 2013 meeting.*

Ms. Tew presented the case on behalf of the Town of Loxahatchee Groves. She submitted Exhibits 1-8, which were admitted into evidence. The Respondent was offered the opportunity to ask questions. The Town's position is that the property is being used for a commercial chipping/mulching operation and that this use is not permitted by the Town's ULDC. Ms. Tew and Town Manager Kutney responded to questions from the Respondent.

Mr. John Ryan, complainant, was sworn in and provided testimony. The Respondent was offered the opportunity to ask questions of Mr. Ryan.

The Respondent provided testimony from Patricia and Jerry Hastings. Mr. Hastings stated that they were trying to work with the Town, but that they could not afford to pay the $5,000 filing fee required for a land use/re-zoning application. Mrs. Hastings testified that 5 acres of the property is now being used as a tree farm and that soil is being produced on the remainder of the property to be utilized in conjunction with the tree farm operation. Respondent also claimed that its use of the property is protected by the Florida Right to Farm Act.

Ms. Tew asked questions of Mr. and Mrs. Hastings. Ms. Tew discussed definitions of mulch and soil amendment, and chipping and mulching.

Ms. Tew requested that the Special Magistrate issue an order of violation.

**Special Magistrate Doney's findings:**

I am finding that the property has been used as a commercial chipping and mulching operation, at least up to the current time, and that this use constitutes a violation of the Town ULDC. What I am not finding or ruling on, at this point, is whether Respondent's converted use of the property as a tree farm/soil amendment operation complies with the Town Code. My finding is that a Commercial Chipping and Mulching operation violates the Town Code. I am finding that the operation that has been going on at the property is a commercial mulching operation. Accordingly, I am going to find a violation of Section 20-015 of the ULDC, and give Respondent until April 20, 2013 to comply with the Code. I am making no finding as to whether the tree farm/soil amendment operation meets the Town Code because that issue has not been presented to me. I also am making no finding as to whether the converted use is permitted by the Right to Farm Act. From this point, I think that the next step of the process is for the Town to make a determination as to whether the converted use is in compliance with Section 20-015 of the ULDC. It will be up to the Respondents to meet with the Town representatives to demonstrate to the Town the current use(s) on the property. The Town can then make a determination as to whether the current use meets the Town Code. If Respondent disagrees with the Town's finding, Respondent will have a right to come back to the Special Magistrate concerning whether the converted use complies with the Town Code.

Mr. Doney explained that the issue will be whether Respondent's use of the property constitutes a chipping and mulching operation or some other use that is permissible under the Town Code. What would happen at the April 24th meeting is that if the Town agrees before then, by April 20, that Respondent meets the Town Code, then you are in compliance and the case is concluded. If the Town is of the opinion that Respondent remains in violation of the Town Code, then we will have a Fine Assessment Hearing.

Ms. Tew said that the action being taken today is based on the use that the Special Magistrate found in violation. They either comply in 30 days, remove the operation from the facility, or they come back for Fine Assessment. She suggested that the Respondent provides the Town with the specifics of the use that they are converting to. If this is a use conversion, there may be additional time for the Respondent to comply.

Ms. Tew requested that the next Special Magistrate Hearing meeting is moved to April 24, 2013. That was agreed upon by all parties.

**5. FINE REDUCTION HEARINGS** – *None*

**6. STATUS UPDATE** – *None*

**7. ADJOURNMENT**

There being no further business, the Special Magistrate Hearing of March 6, 2013, was adjourned at 4:30 p.m.

Susan Eichhorn, Town Clerk

William P. Doney, Special Magistrate

(SEAL)

Date Signed: April 8, 2013