

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



## Town of Loxahatchee Groves

### Special Magistrate Hearing

Wednesday, June 19, 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 Michael D. Cirullo, Jr., Town Clerk Susan Eichhorn, Beverly Tew, President of Tew & Taylor, Inc., Code Enforcement Officer Russell Elgin. Also present was Respondent Todd McLendon and Attorney for Respondent, Gregory S. Kino. Also present was Brenda Murphy, on behalf of Mr. and Mrs. Hastings.

#### 2. SWEARING IN OF ALL WITNESSES

Special Magistrate Doney administered the oath to all witnesses.

#### 3. FINE/LIEN CERTIFICATION

a. 2012-311 Town of Loxahatchee Groves Florida (Petitioner) vs.

**1930 D Road, LLC (Hastings) (Continuance – Hearing/Status Conference)**

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

Brenda Murphy appeared on behalf of Respondent and advised that Mr. and Mrs. Hastings were unable to attend the hearing due to a family emergency. Ms. Murphy requested that the hearing be continued so that Mr. and Mrs. Hastings would be able to attend.

There was no objection from the Petitioner (Town). Ms. Tew stated that an inspection had been conducted and there was still trash and debris on the site. She requested compliance as part of the Order for continuance; that they remove all equipment, trash and debris from the site within 15 days.

Special Magistrate Doney stated that he would issue an Order to continue the hearing to 10:00 a.m. on July 17, 2013, and the compliance issues could be addressed at that time.

**b. 2012-298 Town of Loxahatchee Groves Florida (Petitioner) vs. Todd and Shire McLendon ( P. O. Box 1293)**

PCN # 41-41-43-17-01-332-0010

Location: 3481 D Road, Loxahatchee Groves Florida

Violation: Loxahatchee Groves Unified Land Development Code Article 80 Conditional Uses, Section 80-50 Aviculture (B) (4 & 6) and Article 50 Public Nuisances, Section 50-10 Excessive Noise.

Appearances were entered for Town Attorney, Michael D. Cirullo, Jr., Town Manager, Mark Kutney, Town Planning Technician, Braeden Garrett, Bev Tew, and Russ Elgin of Tew & Taylor, Respondent, Todd McLendon, and Respondents' Attorney, Gregory S. Kino.

Attorney Kino addressed the Motion to Stay Enforcement Proceedings, stating that he was relying on Florida Rules of Appellate Procedure Rule 9.190(e)(3) or Rule 9.310(a). He questioned whether the Town had adopted an ordinance that provided code enforcement authority. Town Attorney Cirullo replied that the Town Council had adopted an ordinance that confirmed and authorized the Special Magistrate process and that Attorney Kino would be provided a certified copy of that ordinance.

Town Attorney Cirullo explained that the Town was seeking to enforce its own Code. The Motion to Stay Enforcement Proceedings was filed yesterday (June 18, 2013), and the date of compliance was May 10, 2013. The stay is not retroactive, and if it is granted the scope of the stay would need to be clear.

After discussion, the Special Magistrate determined that he would hear the fine certification case today, and would issue an order regarding the stay within the next ten days.

The hearing on the fine certification began. Ms. Tew, of Tew & Taylor stated that the Order of Violation was entered on April 4, 2013, ordering compliance by May 10, 2013. She related the corrective action that had taken place since then, and requested that Code Enforcement Officer Russ Elgin explain the noise readings that had been taken.

Mr. Elgin provided information that the noise meter reading on June 17, 2013 at 8:05 p.m. had been taken from the 50' setback west of the property line, and did not indicate a noise violation at that time. The Code requirement for excessive noise is 55 decibels, and that noise reading was 51 decibels. Noise reading on June 18, 2013, indicated no bird noise at all—just ambient background noise. He noted that he had also conducted an inspection on site of the McLendon property, and that Mr. McLendon had given him a tour and indicated the bird cages he had vacated, indicating that he had removed 10 macaws and 30 cockatoos. Mr. Elgin observed no other noise mitigation measures. A noise reading on June 19, 2013, at 8:02 a.m. resulted in a reading of 55 decibels.

Ms. Tew stated that it appeared that the corrective action in the original Notice of Violation had not been accomplished, nor had Mr. McLendon provided Best Management Practices, or any mitigation measures. As a result, she requested that the Special Magistrate consider fines in the amount of \$8,000 from May 11, 2013, through today (submitted as Exhibit 3), and administrative costs of \$2,790.00. She submitted site photos as Exhibit 4.

Special Magistrate Doney admitted Exhibits 1-4 for the record.

Special Magistrate Doney administered the oath to Mr. Todd McLendon. Attorney Kino obtained testimony from Mr. McLendon, and provided Exhibits 1-5, which the Special Magistrate admitted for the record. Town Attorney Cirullo cross-examined Mr. McLendon.

At the conclusion of the testimony, Attorney Kino stated that Respondent was in compliance with the Town Code because of the Right to Farm Act.

Town Attorney Cirullo stated that the compliance date was May 10, 2013. There was a noise reading of 55 decibels as of this morning (June 19, 2013). Mr. McLendon did not seek an inspection until June 17, 2013, and the Town has demonstrated here is non-compliance.

Discussion took place as to whether administrative costs could be assigned as part of the fine.

4. **ORDERS OF VIOLATION** - *None*
5. **FINE REDUCTION HEARINGS** - *None*
6. **STATUS UPDATE** - *None*
7. **ADJOURNMENT**

There being no further business, the Special Magistrate Hearing of June 19, 2013, was adjourned at 12:30 p.m.

List of all Exhibits admitted attached hereto.



Susan Eichhorn, Town Clerk

(SEAL)



William P. Doney, Special Magistrate

Date Signed: July 1, 2013

## Case 2012-298

June 19, 2013 Special Magistrate Hearing

Petitioner (Town) Exhibits 1 – 5:

1. Notice of Hearing Reconsideration/Rehearing and Request for a Hearing
2. Town of Loxahatchee Groves Code Enforcement File Activity worksheet – June 17, 2013
3. Administrative Cost Summary
4. Site Photos
5. Town of Loxahatchee Groves Ordinance No. 2011-009

Case 2012-298

## June 19, 2013 Special Magistrate Hearing

### Respondent Exhibits 1-5:

1. Respondent's Motion to Stay Enforcement Proceedings
2. Copy of 2012 Florida Statute 162.03; Copy of town of Loxahatchee Groves Ordinance List; Copy of Article 10 of the Town of Loxahatchee Groves ULDC
3. Copy of Property Appraiser Property Detail, including maps
4. Copy April 21, 2010 letter from John W. Costigan, Assistant General Counsel, Florida Department of Agriculture and Consumer Services, to Ms. Sue Beaulieu, Legislative VP, The Organization of Professional Aviculturists

Copy April 30, 2010 letter from John W. Costigan, Assistant General Counsel, Florida Department of Agriculture and Consumer Services to Andrew J.

Baumann, Esq., Lewis Longman & Walker P.A., West Palm Beach, Florida

Copy of March 30, 2010 letter from Ms. Sue Beaulieu, Legislative VP, The organization of Professional Aviculturists, to Charles H. Bronson, Commissioner of Agriculture, Florida Department of Agriculture.

Copy of January 18, 1995 letter from Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture & Consumer Services, to Ms. Patricia Chauvin, Florida Alternative Livestock Association, Inc.

5. Docket Report for Palm Beach County Circuit Civil Court Case 502010CA004277XXXMB  
Larry Lefkowitz v Todd McLendon