

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, September 18, 2013 at 10:00 a.m.
Central Palm Beach County Chamber of Commerce,
13901 Southern Blvd., Loxahatchee Groves, Florida 33470

Special Magistrate, William P. 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 10:05 a.m. Present were Town Manager Mark Kutney, Town Clerk Susan Eichhorn, Beverly Tew, President of Tew & Taylor, Inc., Code Enforcement Officer Russell Elgin. Also present were Jerry Hastings on behalf of Respondent, 1930 D Road, LLC., and David Coviello, Esq., on behalf of Respondent, Magic Properties V, LLC (Valley Crest). A court reporter was also present.

2. SWEARING IN OF ALL WITNESSES

Special Magistrate Doney swore in all witnesses.

3. FINE/LIEN CERTIFICATION

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

1930 D Road, LLC. (Hastings) (continuance – 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

Ms. Tew stated that the Respondent had come into compliance. However, the award of the Town's administrative costs is scheduled for this Special Magistrate Hearing.

Ms. Tew offered the following Exhibits:

- Exhibit 1 – Notice of Hearing Fine Certification/Administrative Cost, dated August 22, 2013, and the Affidavit of Service & Property Posting, dated August 23, 2013.
- Exhibit 2 – A statement of Administrative Costs totaling \$3,568.50.

Discussion took place regarding the administrative costs.

Special Magistrate Doney admitted Exhibits 1 and 2 into evidence.

Special Magistrate Findings:

The Special Magistrate stated that he will enter an Order awarding administrative costs in the amount of \$3568.50 to the Town.

4. ORDERS OF VIOLATION - None

5. FINE REDUCTION HEARINGS - None

- 2008-067 Town of Loxahatchee Groves Florida (Petitioner) vs. Magic Properties V,LLC (Valley Crest) (continuance)**

PCN: 41-41-43-17-01-510-0030

Location: 13710 Okeechobee Boulevard

Violation: Unified Land Development Code Article 4, Chapter A, Section 3A, Table 4.A.3.A-1, Chapter B Section 1A.77

Landscape Service Permitted in this Zoned Area Only in
Conjunction with a Retail or Wholesale Nursery

Attorney David Coviello, on behalf of Magic Properties V, LLC, addressed the Special Magistrate. Mr. Coviello stated that the Respondent is in compliance, and they are here to request a fine reduction.

Ms. Tew summarized the case which began in 2008. She submitted Exhibits 1- 11, which were entered into evidence by the Special Magistrate. After discussion, Ms. Tew advised that due to mitigating factors, it is the Town's recommendation that the fine be reduced from \$107,100 to \$45,700. In addition, the Town is seeking administrative costs in the amount of \$1,147.50 plus \$400.00 in costs that had been previously awarded.

Town Manager Kutney made a statement into the record: From the Town's standpoint, we agree with Mr. Coviello's argument relating to mitigating factors. The only issue that hangs in the balance in the Town's mind is the problem of verifying what the applicant may have done during that moratorium period to try to appeal to the Town Council to try to address the situation. That is the reason the Town is in agreement that the amount of the fine be mitigated. The Town cannot agree to totally forgive the fine, but is willing to see the amount of the fine reduced.

Attorney Coviello reviewed the mitigating factors and submitted Respondent Exhibits 1-3. He respectfully requested that the fine be reduced to zero. Mr. Coviello stated that he had forward his arguments to the Town on August 12, 2013. There has been ample time for the Town to review his submittal as well as any relevant ordinances or resolutions adopted by the Town.

Mr. Tew requested additional time to review all of the documentation. She advised that additional review could result in a change in the Town's position concerning the fine reduction.

Special Magistrate Doney stated that he had not had a chance to read all of the documentation. It would help him to have some time to review. This would also provide the Town with additional time to research its records, and then come back on October 16, 2013 to finalize the matter.

Attorney Coviello stated that the review of mitigating factor #1 involves legal arguments. In addition, there are statutory factors that need to be considered and he hoped the Town would consider those as well.

Special Magistrate Findings:

Special Magistrate Doney directed that this matter will come back to be heard at the Special Magistrate Hearing of October 16, 2013, at 10:00 a.m., and that he would enter an Order Continuing Hearing to that time.

6. STATUS UPDATE - None

7. ADJOURNMENT

There being no further business, the Special Magistrate Hearing of September 18, 2013, was adjourned at 11:45 a.m.

A list of Exhibits Admitted in Evidence at the September 18, 2013, Special Magistrate Hearing is attached to these minutes.



Susan Eichhorn, Town Clerk



William P. Doney, Special Magistrate

Date Signed: October 9, 2013

**LIST OF EXHIBITS SUBMITTED INTO EVIDENCE AT THE SEPTEMBER 18, 2013,
SPECIAL MAGISTRATE HEARING:**

Case No. 2012-311 (1930 D Road, LLC – Hastings)

Petitioner Exhibit 1: Notice of Hearing Fine Certification/Administrate Cost, dated 08-22-13,
and Affidavit of Service & Property Posting, dated 08-23-13

Petitioner Exhibit 2: Administrative Costs

Case No 08-067 (Magic Properties V LLC – Valley Crest)

Petitioner Exhibit 1: Citizen Complaint Log, dated 03-19-08

Petitioner Exhibit 2: Courtesy Correction Notice Dated 03-24-08

Petitioner Exhibit 3: Notice of Violation,dated 08-07-08

Petitioner Exhibit 4: Order Finding Vilation, dated 09-10-08

Petitioner Exhibit 5: Zoning Confirmation Response form, 13710 Okeechobee Blvd., Loxahatchee
Groves, FL 33470, dated 10-15-08 – from Palm beach County Department of
Planning, Zoning & Building, 2300 N. Jog Road, West Palm Beach, FL 33411

Petitioner Exhibit 6: Town of Loxahatchee Groves Resolution No. 2013-05

Petitioner Exhibit 7: Notice of Hearing Fine Certification Continuance, dated 08-15-13 and Site
Photos & Property Posting dated 8-16-13

Petitioner Exhibit 8: Shutts & Bowen, LLP, letter dated 09-10-13

Petitioner Exhibit 9: Town of Loxahatchee Groves Ordinances: 2007-07; 2008-008; 2009-002;
2010-001; 2010-004

Petitioner Exhibit 10: Town of Loxahatchee Groves Ordinance 2009-010

Petitioner Exhibit 11: Administrative Cost Summary, dated 09-16-13

Case No 08-067 (Magic Properties V LLC – Valley Crest)

Respondent Exhibit 1: Fine Mitigation Document

Respondent Exhibit 2: Google Earth Map 13710 Okeechobee Blvd., Loxahatchee Groves, FL

Respondent Exhibit 3: Shutts & Bowen, LLP, letter dated 09-10-13, with Exhibits A-F attached:

Exhibit A: Town of Loxahatchee Groves Resolution No 2013-05 – site plan approval

Exhibit B: Order Finding Violation Case No. 08-067, dated 9-10-08

Exhibit C: Minutes of Special Magistrate Hearing of November 16, 2011

Exhibit D: Town of Loxahatchee Groves Ordinance No. 2007-07; 2008-008; 2009-002; 2010-001; 2010-004

Exhibit E: Town of Loxahatchee Groves Resolution No. 2009-10

Exhibit F: Notice of Violation Case No. 08-067, dated 08-07-08