

MINUTES OF CODE ENFORCEMENT
SPECIAL MAGISTRATE HEARING
HELD IN THE COUNCIL CHAMBERS
260 ORANGE TREE DRIVE
ATLANTIS, FL 33462
FEBRUARY 21, 2008

Special Magistrate Jennifer Hunecke presided over the hearing, which commenced at 10:03 am Present were City Attorney Keith Davis, City Manager Mo Thornton, Code Enforcement Officer Sgt. Jack Allen and City Clerk Joan Cannata-Fox. Those testifying were sworn in.

Violations:

The first case presented was CE-08-003 – a violation hearing regarding the dirty roof at 224 Walton Heath Drive, owned by Mr. Eugene Underberg. Present were Mr. Eugene Underberg, Robert W. Horrell, Esq. and court reporter Ilena Lupowitz of Everman & Everman.

The City offered as evidence of proper notice the Notice of Violation with certified mail receipt, the Notice of Hearing with certified mail receipt and the tax collector's printout verifying the notice address. The Special Magistrate found there was proper notice.

The City presented its case, including testimony from Sgt. Allen that the roof was in violation of the City's minimum property standards, and photographs depicting same. Attorney Horrell cross examined Sgt. Allen.

The Respondent testified and offered additional photographs as well as a sample roof tile. The Respondent offered witness in support of his position: Jennifer Jordan testified that she does not believe the roof is dirty. Philip Lee of 241 Walton Heath Drive also testified that he does not believe the roof is dirty. Franklin Gooley, Jr. of Lake Worth, who is a licensed property manager, stated that in his opinion, the roof does not need any cleaning. He further stated that he would not recommend cleaning because it could cause damage to the roof. City Attorney Davis cross examined Mr. Lee and Mr. Gooley.

Mr. Horrell asked additional questions of Sgt. Allen, regarding his code enforcement training. Sgt. Allen testified that he has received Level 1 Code Enforcement Officer training.

City Attorney Davis argued that the City established a violation with competent, substantial evidence and requested a finding of violation, ten days to bring the property into compliance, and \$25.00 per day if the property is not brought into compliance as ordered. The City also requested recovery of its administrative costs.

Special Magistrate Hunecke ruled that based on the testimony and evidence, the Respondent is in violation of the city's minimum property standards code and must bring the roof into compliance within ten days. If not brought into compliance as ordered, a fine of \$25.00 per day will be assessed until compliance is achieved. The Special Magistrate also assessed administrative costs in

the amount of \$62.32 against the Respondent, which are to be paid within ten days. This matter is to be set for a Status/Fine Assessment hearing on March 20, 2008. Special Magistrate Hunecke advised Respondent and Counsel of their right to appeal to the Circuit Court.

Fine Reduction:

The next case presented was 07-121 – a fine mitigation hearing regarding the lack of a proper permanent pool enclosure at 220 Palm Circle, owned by Mrs. Pamela Conway, Deceased.

The City presented its case, offering the Order Assessing Fine dated December 20, 2007; the Affidavit of Compliance showing the property was brought into compliance on January 7, 2008; a Letter dated January 10, 2008 from the City Clerk to Mr. Murnin regarding the fine of \$3900; and a letter from Mr. Murnin, dated January 31, 2008 asking for a fine reduction hearing. The Special Magistrate accepted all items into the record.

William Murnin, who is the Administrator for the Estate of Mrs. Pamela Conway, as well as her brother, testified by telephone, requesting the Magistrate to reduce the fine assessed in this matter, outlining the circumstances of his sister's illness, death and his obligations regarding the property. He felt that he had acted in a timely manner. The fine is presently \$3900 and he is asking for a reduction, based on his testimony.

The City stated that the property was in violation of the County Pool and Spa code which is a serious safety violation. The fence passed final inspection on January 7, 2008, resulting in the \$3900 fine. However on December 20, 2007, the fence was inspected and failed only due to a lack of bond wire; otherwise the fence passed inspection. Under the circumstances, the city is willing to reduce the fine to \$2100, which would bring the compliance date to December 20, 2007, instead of January 7, 2008. The City would oppose any reduction unless the fine is paid within thirty days, if not; the original amount of the fine is reinstated.

Special Magistrate Hunecke explained the criteria she is to follow when considering a reduction. Special Magistrate Hunecke ruled that the fine be reduced to \$1500, and said fine to be paid within thirty days from today. Upon receipt of payment, the City will record a Release of Lien.

The hearing adjourned at 9:50 a.m.

Joan Cannata-Fox
City Clerk

NOTE: A mechanical recording has been made of the foregoing procedures of which these minutes are a part, and is on file in the office of the City Clerk.