



SPECIAL MAGISTRATE HEARING MINUTES

Thursday, December 12, 2024 at 3:30 PM

City Commission Chambers – 105 S. 2ND Street, Flagler Beach, FL 32136

EMERGENCY HEARING

1. Call the meeting to order

Magistrate Popp called the hearing to order at 3:30pm.

2. Roll Call

City Attorney Drew Smith, Code Enforcement Officer John Gifford, Code Enforcement Officer Gary Hinebaugh and Clerk to the Magistrate Michele Ficocello.

3. Deletions and changes to the agenda

None

4. Request To Identify Persons Having Cases on The Agenda

5. Approval of Meeting Minutes

None

6. New Cases - Code Enforcement

a. Case Number: EEN24-0043

Respondent: Mike Jones Trust A/K/A Adel Assad

Address of Violation: 2244 S. Ocean Shore Blvd.

Tax Parcel ID Number: 19-12-32-4400-00010-0070

Violation: CHAPTER 13 – NUISANCES SEC. 13-1. (4) DEFINITION - partition fences, buildings or other structures which have fallen into such a poor state of repair to the extent and in the manner that they may reasonably become infested or inhabited by rodents, vermin or wild animals, or may threaten or endanger the public health, safety or welfare, or may adversely affect and impair the economic welfare of adjacent property.

All parties testifying were sworn in by the Clerk. The Respondent was present and stated name, Adel Assad, and address, 2244 S. Ocean Shore Blvd., for the record. The Respondent submitted a letter to City Staff, and it is attached to the minutes. The City Attorney stated there are multiply code violations present at this property and the emergency hearing was called today for a specific violation related to windblown rooftop debris for which the City is seeking relief. The City Attorney further stated the debris has been removed as of this morning. Code Enforcement Officer John Gifford testified to the immediate threat to health and safety providing photographic evidence and outlining the complaint received by a neighbor of debris on the rooftop. Other violations were observed and noted by the photographic evidence. The Respondent confirmed he has removed the rooftop debris and requested the case be dismissed. Magistrate Popp addressed the other violations and the safety concerns associated with them. Magistrate Popp inquired about the Respondent's plans for curing the other violations. The Respondent testified he is in compliance. Magistrate Popp ordered Code Enforcement to schedule a meeting with the Respondent to review outstanding violations and come into compliance. Magistrate Popp ordered a status hearing for January 2025. Code Enforcement and the Respondent agreed to meet at the property on December 16, 2024 at 9:00am. The City Attorney

indicated if the property is verified to be in compliance prior to the January 2025 hearing, the case will be closed.

7. Other Business

The Clerk reported no current parking citation appeals on the January 2025 agenda. Code Enforcement reported multiple code enforcement cases will be on the agenda to include 3590 S. Ocean Shore Blvd, 1336 S. Flagler Avenue, 1005 N. Ocean Shore Blvd. and 1201 S. Flagler Avenue.

8. Adjournment

Magistrate Popp adjourned the hearing at 4:00pm.

City of Flagler Beach
Attention: Special Magistrate
105 South 2nd Street | P.O. Box 70
Flagler Beach, FL 32136

SUBMITTED BY HAND-DELIVERY

Date: December 10, 2024

Case No. EEN24-0043, 2244 S. Ocean Shore Blvd, Flagler Beach, Florida 32136

Dear Special Magistrate,

I received a notice of violation, dated September 23, 2024 from the code enforcement officer. Although I resolved the purported violation and I showed the resolution to the code enforcement officer, I was hand-delivered a notice of hearing before Your Honor scheduled for December 12, 2024 at 3:30 pm. ***Two days notice for a hearing*** before Your Honor is insufficient time for me to present my defense, demonstrate that the violation was resolved, and protect my legal rights to a full and fair hearing. Pursuant to Chapter 162, Florida Statutes, Chapter 2, Article IV, Division 2, Section 2-76 reads, "The special magistrate or code enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The special magistrate or code enforcement board shall take testimony from the code enforcement officer and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings."


Procedural due process requires both fair notice and a real opportunity to be heard "at a meaningful time and in a meaningful manner." *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So.2d 940, 948 (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The specific parameters of the notice and opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding. *Keys Citizens*, 795 So.2d at 948 (citing *Gilbert v. Homar*, 520 U.S. 924 (1997)).

In considering procedural due process under Chapter 162, Florida Statutes, the procedural gaps in Chapter 162 must be filled with common-sense application of basic principals of due process. *See Massey v. Charlotte Co.*, 842 So.2d 142, 145 (Fla. 2d DCA 2003) [citing *City of Tampa v. Brown*, 711 So.2d 1188 (Fla. 2d DCA 1998)]. Conducting a hearing ***within two days*** whereby fines could be levied or in which a lien could be imposed defies common-sense principles of due process and fairness.

I must be permitted to dispute any evidence, cross-examine witnesses, and be informed of all facts upon which Your Honor may rule. *See Massey v. Charlotte Co.*, 842 So. 2d 142, 147 (Fla. 2d Dist. App. 2003); *Kupke v. Orange Co.*, 838 So. 2d 598, 599–600 (Fla. 5th Dist. App. 2003); see generally Fla. Stat. § 162.07 (describing in general the conduct of county or municipal code enforcement hearings). Without additional time, I will be unable to adequately present my defense or dispute any evidence presented at the hearing

I am in the process of gathering evidence and witnesses to present my defense and to retain an attorney to represent me. A hearing within two days (December 12, 2024) does not provide me with a meaningful time or manner. I respectfully request a continuance of at least 30 days to prepare my defense and retain legal counsel to represent me. A 30-day continuance will not prejudice the government but instead will ensure my rights are adequately protected and that I am provided with a meaningful opportunity to be heard. Thank you for your consideration.

Sincerely,


Adel Assad
Mike Jones Trust
P.O. Box 1706
Flagler Beach, FL 32136

*Two pages
Hand delivered to*

*X refused to sign
(A) also*