

**CITY OF PORT ST. LUCIE
SPECIAL MAGISTRATE HEARING MINUTES
MARCH 28, 2012**

A SPECIAL MAGISTRATE HEARING of the City of Port St. Lucie was called to order by Special Magistrate Frank Blandino on March 28, 2012, at 9:00 a.m., at Port St. Lucie City Hall, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

CALL TO ORDER

Present: Frank Blandino, Special Magistrate
Stefanie Beskovoyne, Assistant City Attorney
Aaron Biehl, Code Compliance Specialist
Brian Burdett, Code Compliance Specialist
Toniann D'Amico, Code Compliance Specialist
Michael Drost, Code Compliance Specialist
Rebecca Figueroa, Code Enforcement Administrative
Assistant
Chick Hendrickson, Code Compliance Specialist
Michael Lubeck, Code Compliance Supervisor
Dennis Millward, Building Department
License Investigator
Ana Nunes, Code Compliance Specialist
Jasmine Padova, Licensing Clerk, Building
Department
Kevin Pierce, Licensing Investigator
Wayne Phillips, Code Compliance Specialist
Jack Reisinger, Building Department Manager
Anthony Veltre, Code Compliance Specialist
April C. Stoncius, Deputy City Clerk

PLEDGE OF ALLEGIANCE

The Special Magistrate led the assembly in the Pledge of Allegiance.

OATH OF TESTIMONY

The Deputy City Clerk administered the Oath of Testimony to the Code Compliance Specialists and Building Department employees.

OPENING

The Special Magistrate said, "You are here because you have received notice that your property is possibly in violation of a particular City Code. You have been given a certain amount of time to comply, and so far you have not done so. The hearings

will begin shortly. If found in violation, you have the right to an appeal in the Circuit Court of St. Lucie County."

APPROVAL OF MINUTES - FEBRUARY 22, 2012

There being no corrections, the minutes were unanimously approved.

VIOLATION HEARINGS

NUNES CE-12-00110 KIRK YOUNG 1706 SW MONTERREY LANE

Code Compliance Specialist Nunes said, "This case concerns the property at 1706 SW Monterrey Lane, Port St. Lucie, Florida. On January 13, 2012, an inspection was done and photos were taken showing the following violations: Section 72.10(C), utility trailers in residential zones, open utility trailer parking, and not displaying a current tag, and Section 158.211, storage of materials, accumulation of materials, refuse, and waste materials prohibited, open storage of tires and other items on property. A Notice of Violation was issued on February 6, 2012. They had until February 17, 2012, to bring the property into compliance as to all of the listed Code violations. Compliance was not achieved by such date, and a Notice of Hearing was furnished on March 2, 2012, by certified mail. On March 8, 2012, proper service was achieved by certified mail return receipt. I request that the respondent, Kirk Young, be ordered to comply with the cited provisions of the City of Port St. Lucie Code by April 17, 2012, and if not in compliance by that date, that they be required to pay a fine in the amount of \$100 for every day that the violations continue thereafter not to exceed \$10,000. The City has incurred costs in the amount of \$350 in conducting the investigation."

The Deputy City Clerk administered the Oath of Testimony to Kirk Young and Randy Hant. Mr. Young said, "I'm the owner, and Mr. Hant is the tenant. We received the Notice of Violation, and he has made progress on them. The major issue is that there is a trailer on the property with an off-road vehicle. The times that she has gone to see the trailer, it did not have a tag on it. Mr. Hant has indicated that he does have a tag, and it is registered." Mr. Hant stated, "I have the registration for it if you would like to see it. I don't keep the tag on the trailer, because when I tow the trailer it is inches from the ground. It destroys it by scraping on the road. When she came by Tuesday, I had forgotten to put the tag back on from Monday when I used it. I have a picture of it from last night with the tag on it." The Special Magistrate asked, "Can he have a utility trailer stored in a residential zone?" Code Compliance Specialist Nunes

replied, "He can have the trailer there as long as the truck is on top of the trailer, and the trailer has no other items on it. This has been going on for quite a long time. He cleans it up, and days later there are the same issues. He is aware of the ordinances, as the Code Compliance Supervisor, Mike Lubeck, had the same issues previously. All that I'm asking is for him to display the current tag on the trailer, and secure the garbage cans to keep the place the way that it should be, nice and clean. Otherwise, I will issue citations." Mr. Hant said, "I've kept it clean since the last time that she was there."

Code Compliance Supervisor Lubeck said, "I received an email yesterday from Code Compliance Specialist Nunes regarding this property. I have had numerous cases on this property over the last four years." Mr. Hant clarified, "I've only been there two years." Code Compliance Supervisor Lubeck stated, "It is a reflection of the property owner. There were the same open storage issues." The Special Magistrate said, "I think it is straightforward regarding what you need to do. It is a shame that it had to come to this point, but it seems like this has been going on for a while. Are there any violations right now on the property?" Mr. Hant responded, "Just the trailer." Code Compliance Supervisor Lubeck advised, "As of yesterday, he was clearly in violation of the open storage, and of a trailer without a tag. I can attest that there have been continual conversations with Mr. Hant over the last two years in regards to what open storage is, and what needed to be done on the property. There has been contact with the tenant and the owner regarding what needs to be done." The Special Magistrate stated, "You need to keep the tag on the trailer, in spite of the problem that you are having with it. First, you get a letter regarding the violation. If anything isn't done, you get a certified letter. If you don't sign for it, the property is posted. If nothing is done after that point, you get a notice of hearing to be here. There are several steps to get to this point, so I don't know why you are saying that it is a surprise. It has been four months." Mr. Young said, "I'll go by this weekend, take some pictures, and email them to you."

The Special Magistrate stated, "I hereby make the following Findings of Fact: Based on the evidence presented in Case 12-00110, my Conclusion of Law is that the violations as originally cited in the affidavit did, in fact, occur as listed therein. The violations remaining as of the last inspection are as follows: Section 72.10(C), utility trailers in residential zones and Section 158.211, storage or accumulation of materials, refuse, and waste materials prohibited, open storage. The alleged violator is Kirk Young. The property address is 1706 SW Monterrey Lane, Port St. Lucie, Florida. The property owner has

until April 17, 2012, to come into compliance. Otherwise, they will be assessed a daily fine of \$100, not to exceed \$10,000. Administrative costs are set at \$350."

**PIERCE 12-14678-BL ALBERT R. AND ARLENE M. VOTINELLI 457
SW DAVID TERRACE**

Investigator Pierce said, "This case concerns the property at 457 SW David Terrace, Port St. Lucie, Florida. On November 14, 2011, an inspection was done and photos taken showing the following violation: City Ordinance 150.001 and FBC 105.1, garage conversion without a building permit. A Notice of Violation was issued on December 3, 2011. They then had until January 15, 2012, to bring the property into compliance as to all of the listed violations. Compliance was not achieved by such date, and so a Notice of Hearing was furnished on February 2, 2012, by certified mail. On February 7, 2012, proper service was achieved by certified mail return receipt received. I request that the respondents, Albert R. and Arlene M. Votinelli, be ordered to comply with the cited provisions of the City of Port St. Lucie Code by April 30, 2012, and if not in compliance by that date, that they be required to pay a fine in the amount of \$50 for every day the violation continues thereafter not to exceed \$10,000. The City has incurred costs in the amount of \$350 in conducting the investigation."

The Deputy City Clerk administered the Oath of Testimony to Albert R. Votinelli, who said, "I have every intention of coming into compliance. I have experienced some delays with the process, but have done a significant amount of work towards becoming compliant. I can provide that today, if necessary. I will come into compliance in a timely fashion." The Special Magistrate asked, "Has there been a permit applied for?" Investigator Pierce replied, "There has not been a permit applied for, but he has been in contact with me, and has obtained engineer letters with a set of drawings. I have no reason to doubt Mr. Votinelli is not pursuing this. He has the plans that we would accept for a permit. Due to the new Code changes, he was having some difficulty with his air conditioning issues. There are some new things that are required to comply with the Code. The City would like to have a Finding of Fact to establish a violation. In this case, we would be willing to have the administrative hard costs tied to the compliance deadline." The Special Magistrate questioned, "Is the deadline of April 30, 2012, realistic?" Investigator Pierce answered, "I believe it is reasonable, given the fact that we are adjusting our hard costs if he comes into compliance." The Special Magistrate asked, "Is a month going to be enough time to get it permitted?" Mr. Votinelli replied, "I'm not really well advised of the process,

so I'm basing it on your recommendation. I have the permit form, and I will submit everything." Investigator Pierce clarified, "When we receive two copies of the engineer's letter with the two drawings and the Manual J's, the City will take the engineer's approval in lieu of the inspections. My recommendation would be to submit the permit today. April 30, 2012, is more than enough time to rectify it."

The Special Magistrate stated, "I hereby make the following Findings of Fact: Based on the evidence presented in Case 12-14678-BL, my Conclusion of Law is that the violations as originally cited in the affidavit did, in fact, occur as listed therein. The violation remaining as of the last inspection is as follows: City Ordinance 150.001 and Florida Building Code 105.1, garage conversion without a building permit. The alleged violators are Albert R. and Arlene M. Votinelli. The property address is 457 SW David Terrace, Port St. Lucie, Florida. The property owner has until April 30, 2012, to come into compliance. Otherwise, they will be assessed a daily fine of \$50, not to exceed \$10,000. As long as there is compliance by that date, the \$350 administrative costs will not be assessed."

MODIFICATION REQUESTS

Ms. Beskovoyne said, "The cases being reviewed today have already been adjudicated to a final conclusion, and these requests are only for a possible adjustment to the existing fines owed to the City of Port St. Lucie for a Code violation, which resulted in an Order of Enforcement recorded in the public records. These cases are being heard as a matter of Board policy only and are not mandated by statute. The Special Magistrate has received a packet of information about each case in advance of the hearing."

09-9509-BL WILLIAM CLOUD

Ms. Beskovoyne said, "We don't recommend a modification. We opened the case on April 22, 2009, and had a hearing on August 26, 2009, where he was given a compliance date of June 20, 2011. It was for a garage conversion without a building permit. They are trying to sell the property at this time." The Deputy City Clerk administered the Oath of Testimony to Jack Reisinger, who said, "We are not recommending a modification in this case, because it was a garage conversion, which is a high priority and a life safety issue. We don't give any leeway on a garage conversion, because we don't know what is going on in there. It is real simple to come into compliance. He could have removed it, and made it a garage, which could have been done immediately, or he could have permitted it. The owner chose to

ignore us for years, and now all of a sudden, he wants a modification." The Special Magistrate clarified, "So there hasn't been any compliance." Mr. Reisinger advised, "It is now, but all of those prior years, it was not in compliance." Ms. Beskovoyne pointed out, "It has been almost two years. We opened the case in April of 2009, and it came into compliance in June of 2011."

Albert Moore, Attorney for William Cloud, said, "I understand the City's position, but there is some background information that you need to be aware of. There are some financial considerations that he had in regards to this. Mr. Cloud purchased the house in 2005, and I was the closing agent. I have firsthand knowledge that he had no idea when he purchased the property, there had been unpermitted work done. There was nothing in the public records to indicate it, and there was no lien filed. Four years after he purchased the house, his neighbor had a similar problem. The City found out about it, and they didn't know that this issue existed for at least five years. We still don't know when the actual conversion took place, or which owner did the construction. When the unpermitted work came to the attention of Mr. Cloud, he was out of work at the time. He wants to short sale the house, and has brought the house into compliance. We are not talking about an expensive piece of property. I have the contract with a purchase price of \$40,000. The lien would be over 10% of what the purchase price is. The mortgagee has already indicated that they are not going to pay for it, and not allow the short sale. The potential buyer is not going to pay over 10% for the lien. Mr. Cloud is trying to get back on his feet, as he is working now. We are asking for some compassion, as it wasn't his fault. It is his obligation, because he is the homeowner, but he didn't do the work, and didn't know it was there when he bought it. He is not making a dime off of this short sale. He just wants to sell the property."

The Special Magistrate inquired, "What are you proposing?" Mr. Moore responded, "That he be required to only pay the \$350 administrative fee." Mr. Reisinger pointed out, "The outstanding lien is \$5,000." The Special Magistrate asked, "What is the mortgage on this property?" Mr. Moore replied, "It is \$180,000." Mr. Reisinger stated, "I find it interesting that the owner didn't know that the garage was converted when he purchased the house." Mr. Moore clarified, "He knew it was converted, but he didn't know it was unpermitted." Mr. Reisinger remarked, "He didn't check into it." Mr. Moore said, "He had no way of knowing that it was unpermitted." Mr. Reisinger explained, "When he received notice from us, he didn't take care of it right away." Mr. Moore advised, "He was unemployed, and in a position that he

had to short sale his home. He is now employed, and trying to get out from under it." The Special Magistrate clarified, "So when he first became aware of it, he was under financial strain." Mr. Moore replied in the affirmative.

Mr. Reisinger said, "In 2009, he never contacted us or came to the hearing. An easy resolution, which wouldn't have cost anything, would have been to remove it. We are concerned about somebody living in an unpermitted structure. We work with everyone on those kinds of projects. He chose to ignore us, but now all of a sudden, it is important to him. If we chose to do this on everybody, then why make anyone get a permit?" Mr. Moore responded, "Your point is well made if it is someone that is doing the unpermitted work. He was not responsible for it, and when the issue came up, he didn't have the money to pay an engineer to take care of it. The City didn't even know it was unpermitted for at least five years. I'm just asking that you give this gentleman a break." Mr. Reisinger explained, "I still stand by my modification recommendation, based on the fact that it was possibly a bedroom and was a safety issue. It could set a precedent, and we don't want to set a precedent that we would ignore something like this in the future because of a financial situation." The Special Magistrate said, "The bottom line is that there is compliance, even though it was a little late. I'm going to reduce it, but not down to administrative fees. I'll reduce it by half, in spite of the City's recommendation. I'll bring it down to \$2,500." Mr. Moore asked, "Would you consider between \$500 and \$1,000, so the deal can go through?" The Special Magistrate replied, "I'm not here to negotiate. I will reduce to \$1,000." Mr. Moore inquired, "Can we reduce it down to \$750? I just want the deal to go through, as he is not going to make any money on it." Mr. Reisinger pointed out, "If someone is purchasing \$180,000 piece of property for \$40,000, it could be stepped up to \$41,000." Mr. Moore said, "It was a ridiculous amount of money when he purchased the property. I'm surprised he is getting \$40,000 for it. It is a tiny house with the garage conversion." The Special Magistrate said, "I'm going to reduce it to \$750, that way the matter can be closed. It will put someone in the home that will take care of it. Can this be paid within the next 30 days?" Mr. Moore responded, "He will have to." The Special Magistrate asked, "When is the closing set for?" Mr. Moore replied, "I don't have that date from the realtor, but I will make sure it is paid." The Special Magistrate clarified, "If he doesn't pay within 30 days, then the full amount will be due." Mr. Moore replied in the affirmative.

The Special Magistrate said, "Based on the evidence presented in this case, there is sufficient reason to reduce the total amount

of the fine owed to the City to \$750. Here the petitioner has 30 days to make full payment of the reduced fine, at which time the City will release the lien filed in the public record within 30 days of receipt of payment. In the event the reduced amount is not paid within the time limit set, the original total amount will remain due and payable to the City. Recording costs here are charged to the petitioner. Recording costs are payable by the petitioner."

09-11601 COUNTRYWIDE HOME LOANS, INC.

Ms. Beskovoyne said, "The final judgment was recorded on May 14, 2009, and the case was opened on August 5, 2009, with a hearing date of October 14, 2009. The compliance date given was November 4, 2009, and they came into compliance on January 18, 2012. The violation was for property maintenance, unmaintained pool, and high grass and weeds. Code Enforcement is recommending that the lien be modified to \$1."

The Special Magistrate said, "Based on the evidence presented in this case, there is sufficient reason to reduce the total amount of the fine owed to the City to \$1. Here the petitioner has 30 days to make full payment of the reduced fine, at which time the City will release the lien filed in the public record within 30 days of receipt of payment. In the event the reduced amount is not paid within the time limit set, the original total amount will remain due and payable to the City. Recording costs here are charged to the petitioner. Recording costs are payable by the petitioner."

VIOLATION HEARINGS

Ms. Beskovoyne read the following cases into the record:

CASE #	NAME	ADDRESS
09-1630	The Bank of New York Mellon f/k/a Bank of New York, as Trustee for the Certificateholders of CWALT, Inc. Alternative Loan Trust 2006-OC7 Mortgage Pass-through Certificates Series 20060-OC7, and Gene R. and Dora E. McDonald	2021 SE Hideaway Cir.
12-0412	Ralph Haehn & William Schan	1322 SE Roanoke Street
12-0525	Martin Hofstetter	1934 SE Avanti Circle
12-0395	Deborah Schmidt	St. Lucie West Blvd., Lowe's of St. Lucie West

		Parcel ID 3420-601-0002-000/9
11-12417	William F. Dwyer, Trust	802 SW McCullough Ave.
12-0095	BAC Home Loan Servicing	2362 SW Neal Road
12-0268	JP Morgan Chase Bank, NA	2299 SE Glover Street
11-12658	Christifor & Felicite Cinord	717 NW Bristol Street
11-12796	Kwok-Ho & Yuk King Chan	613 SW Pueblo Terrace
10-4037	Nora S. Shepley	686 SE Thornhill Drive
12-13211-	Countrywide Home Loans, Inc.	1402 SW Empire Street
BL		
12-13555-	Wilnick & Ofanise Cherisma	2374 SE Floresta Drive
BL	and Chase Home Finance LLC, Successor by merger to Chase Manhattan Mortgage Corporation	

The Special Magistrate stated, "In these cases I find that the violators are not present today, and that the violations do exist. The violators are deemed to have admitted guilt to the violations. I further find that the violator be given the number of days recommended by the court officers on the summary sheets to come into compliance, or they may be fined the amount that is also reflected on the summary sheets."

CERTIFICATION OF FINES

The Special Magistrate asked, "With regard to the alleged violators who are not here today, how were they notified of the hearing this morning?" Ms. Padova replied, "A Notice of Hearing was sent to the violators via certified mail. If the green card was returned, it was placed in the file as due process. Ten days prior to the hearing, a Notice of Hearing was posted on the bulletin board in the lobby of City Hall. A Notice of Hearing was also posted at the property in question, along with an Affidavit of Posting for those where we did not get a green card back or the mail came back undelivered. If the certification card was not returned to the Code Enforcement Department within ten days of the hearing, posting was completed in the same manner as if the green card was returned unclaimed."

ADJOURN

There being no further business, the meeting adjourned at 9:45 a.m.

April C. Stoncius, Deputy City Clerk