



**Special Magistrate Hearing
April 18, 2024, at 9:00 A.M.
Howey-in-the-Hills Town Hall
101 N. Palm Ave.
Howey-in-the-Hills, FL 34737**

MINUTES

I. CALL TO ORDER- SPECIAL MAGISTRATE ZACHARY J. McCORMICK, PRESIDING

Special Magistrate, Zachary J. McCormick, called the Special Magistrate Hearing to Order at 9:00 A.M.

II. STATEMENT OF EVIDENCE

Code Enforcement Officer, Matt McDonald, read out loud the following statement:

Town of Howey-in-the-Hills Code Officer McDonald advised that all events occurred within the corporate limits of the Town. The Officer's notes, case narratives, testimony, photographs, supporting documents and PowerPoint presentation were all entered as part of the official record.

Town Clerk, John Brock, swore in Code Enforcement Officer, Matt McDonald and Kaleb Arellano.

III. PUBLIC HEARINGS

A. KALEB J. ARELLANO

CASE NO: CE-23-10-0136

OWNER: KALEB J. ARELLANO

OFFICER: MATTHEW McDONALD

VIOLATION:

Town of Howey-in-the-Hills Land Development Code (LDC) Chapter 5.01.07(A).

ORDINANCE DESCRIPTION:

A permit must first be obtained from the Town before any person erects, constructs, enlarges, alters, replaces any fence or wall regulated by this Chapter. The Town's building official may determine that a permit is not required for minor repairs.

VIOLATION DESCRIPTION:

A total of 13 sections of vinyl fence panels were installed on a parcel without a building permit.

PARCEL #: 2620250100D2700600

PROPERTY ADDRESS: Alt Key #1255261 Sixth Ave, Howey-in-the-Hills, FL 34737

Code Enforcement Officer, Matt McDonald, identified the case being brought before the Magistrate.

Special Magistrate McCormick asked the respondent to come before the podium and identify himself. Kaleb Arellano approached and identified himself.

Officer McDonald asked to introduce a packet of 25 pages as exhibits #1 through #6. They included:

#1 – 2 pages – A Property Record Card and Warranty Deed

#2 – 2 pages – Pictures of the fence that was erected on the property

#3 – 9 pages – Copies of Notices and pictures of Notices and where they were posted

#4 – 4 pages – Affidavits of posting

#5 – 7 pages – Printouts of email correspondence between the officer, the respondent, the Building Official's permit tech, 1 letter sent from the respondent to the Code Enforcement Officer, and 1 letter sent from the Code Enforcement Officer to the respondent

#6 – 1 page – A Screen capture of the Town's permitting software showing that no permits were pulled for the fencing

Special Magistrate McCormick asked for evidence and testimony from the respondent, Kaleb Arellano.

Mr. Arellano stated that he owned the vacant lot off of 6th Street that Officer McDonald had referenced. Mr. Arellano stated that last fall he was at his property doing work on it and noticed a lot of drug activity on the next-door property, with many cars coming and going and parking on his property. Mr. Arellano stated that trash and drug paraphernalia was being discarded on his property. Mr. Arellano said that he was concerned about liability due to what he had witnessed, so he had the fence erected on the border between the two properties without a permit.

Mr. Arellano stated that he received a notice from the Town on October 31, 2023, about the fence being constructed without a permit. Mr. Arellano stated that he applied for a permit on November 17, 2023, and was told that he needed to submit a survey with his permit application. Mr. Arellano stated that he requested that a site plan that he had submitted with the permit be accepted instead of the survey. Mr. Arellano stated that he never received a clear message from the Town on whether the site plan would work instead of the survey.

Mr. Arellano stated that he received another notice about the issue on March 4, 2024. Mr. Arellano stated that he left several messages for Officer McDonald that were not returned until March 25, 2024. Mr. Arellano said that he was informed at that time that a survey was required and that the site plan would not be accepted as a survey. Mr. Arellano stated that

Officer McDonald informed him that he either needed to get a survey of the property or take down the fence.

Mr. Arellano requested one of the following four solutions: 1) His original site plan be accepted instead of a survey. 2) A plot plan be accepted instead of survey. 3) The legal description of the property be accepted instead of the survey. 4) A signed letter from his neighbor stating that he agrees with the location of the fence.

Special Magistrate McCormick asked Code Enforcement Officer McDonald if he would like to respond.

Officer McDonald stated that as far back as October 31, 2023, he had clearly communicated to Mr. Arellano that he needed a permit (which requires the survey), or he needed to remove the fence.

Special Magistrate McCormick asked Officer McDonald if the Town would be willing to accept one of the requested alternatives to a survey. Officer McDonald stated that the Town would not accept an alternative as the requirement for a survey was codified in the Town's Land Development Code.

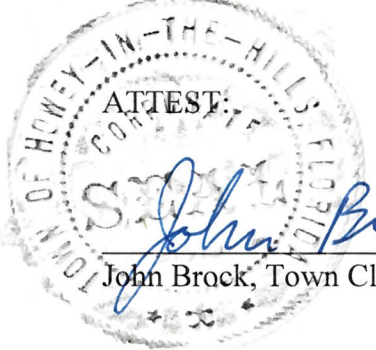
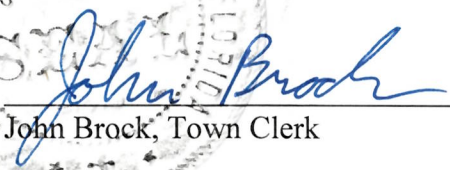
Special Magistrate Ruling: The respondent was given 30 days to procure the services of a surveyor or remove the fence. No fines or fees would be issued at the time of the ruling. If the fence remains past the thirty days and no surveyor was procured, on the 31st day, fines will begin to accrue at a rate of \$100 a day until compliance. If the respondent is able to procure a surveyor within 30 days, but the surveyor cannot survey the property within 30 days the respondent could submit evidence to that fact to the Town Clerk who would then then add this case to the docket for the next Special Magistrate Hearing. If the respondent submits evidence of procuring a surveyor within 30 days and the case is added to the next docket, Special Magistrate McCormick stated he would forego fines until the next Special Magistrate Hearing, however if the Magistrate finds at the next hearing that the respondent did not make a good faith effort in procuring a surveyor fines will be made retroactively to back to the 31st day.

Special Magistrate McCormick then modified the ruling. The modified ruling stated that the respondent had 30 days to provide proof of procuring the services of a surveyor from the date of the hearing or remove the fence. If the respondent had not provided the Town with proof of hiring a surveyor or removed the fence in the 30 days, fines will begin on the 31st day after the hearing at a rate of \$100 a day.

IV. ADJOURNMENT

Special Magistrate McCormick reviewed and approved the minutes from the November 16, 2023, Special Magistrate Hearing.

Special Magistrate Hearing was adjourned at 09:36 AM.

John Brock, Town Clerk



Zachary J. McCormick
Special Magistrate

Date: 8/15/2024