

**ST. PETE BEACH CITY COMMISSION
WORKSHOP**

October 20, 2010

MINUTES

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT

**Commissioner Shavlan
Commissioner Halpern
Commissioner Garnett
Vice Mayor Parent
Mayor Finnerty**

ALSO PRESENT

City Manager Mike Bonfield

Mayor Finnerty called on Mr. Bonfield to outline the purpose of the Workshop. He stated that Special Magistrate John Elias has been called to discuss his role as Special Magistrate for the City. Mr. Bonfield explained that Mr. Elias acts in a quasi-judicial position hearing the City's cases; according to the Statute, the City has two options i.e. take Code Enforcement violations to the County Court, set up a Code Enforcement Board to hear violations or use a Special Magistrate which has been the City's choice for several years.

Since many of the Commissioners have never met Mr. Elias, Mr. Bonfield suggested that they have a casual, candid conversation and questions and answers and he feels sure he will be glad to answer any way he can.

Mayor Finnerty welcomed Mr. Elias to the Meeting.

Mr. Elias gave a brief outline of his background and his practice which includes acting City Attorney for Seminole, Belleair Shore and Kenneth City. He has lived in the area since 1974; his law office is physically located in Clearwater. His private practice includes litigation and municipal law. He is Board Certified in Civil & Trial work and has an "AB" rating in Martindale Hubbel.

He has been the Special Magistrate for the City of St. Pete Beach since 1999. That was the first year the City passed an Ordinance authorizing a Special Magistrate form of code enforcement.

Mr. Elias gave a brief outline of his duties as Special Magistrate and then asked the Commission if they had any questions.

Commissioner Halpern thanked Mr. Elias for coming to the Workshop. He stated that he had gone back and listened to a Meeting between the Commission and Mr. Elias back in 2006 or 2007 wherein it was stated that Code Enforcement is for the betterment of the City and not specifically to generate income.

Mr. Elias stated that he feels the primary principal philosophy of code enforcement in general is compliance. Whether enforcement is revenue generating or compliance, it certainly shouldn't affect the Special Master's particular view or ruling on a particular case. The Special Master is there to take the facts that are presented, normally by the Code Enforcement Officer, and make a determination as to whether there is a violation as alleged.

Commissioner Halpern asked how do they collect fines from repeat offenders and have they had any really serious issues like that.

Mr. Elias stated that the fine is imposed by the Special Master. That fine and the order establishing that fine indicates that it can be a lien upon recording with the County Clerk's office. That order is normally recorded at some point in time and he did not know the time frame after the date of issuance to the date of recording.

Commissioner Halpern asked how does the City collect fines from repeat offenders and have they had any really serious issues like that.

Mr. Elias explained that the way they are collected is that a fine is imposed by the Special Master. That fine and the order establishing that fine indicates that it can be a lien upon recording with the County Clerk's office. Once it is recorded, it becomes a lien on whatever property where the violation occurred. You cannot file a lien on homestead property. After that lien is filed, a period of three (3) months, then the City Attorney can file suit to foreclose on that lien. He can do that anytime after three (3) months. Once the lien is filed, the law indicates that that lien becomes the property of the City and the City can entertain requests, i.e., a reduction of the fine. Once the lien is filed, the Special Master loses jurisdiction

and it falls within the jurisdiction of the counsel at which time the violator may petition counsel for a hearing to request reduction.

Mr. Elias went on to explain some of the things that constrain the Special Master are due process. He is required to give due process. Due process is nothing more than proper notice, an opportunity to be heard and a fair hearing. Normally, what happens is that on first notice of a violation at the hearing, i.e. a fact finding hearing, in which he finds certain facts and finds that there is a violation. He gives the violator a certain amount of time in which to bring that violation into compliance, advising him that his failure to bring it into compliance is going to result in a second hearing in which fines are more than likely going to be imposed. A fine for a regular violation, not a repeat violator, is up to \$250 per day. If it's a repeat violation, it's \$500 per day.

Mr. Elias explained in detail the due process and the two (2) hearings that are held.

Vice Mayor Parent stated that he understands the entire process which amounts to about thirty (30) days or a month. He would be curious to see a list of the properties that have had liens filed against them and a list of the one that have had fines imposed against them but have not had liens filed.

Mr. Elias stated that the process takes closer to forty/forty-five days because the only meet once a month.

Mr. Bonfield said he thinks that they would get compliance from a majority of the people who are approached with a violation.

Vice Mayor Parent asked if the City had room within the law to mow the lawn and bill them as part of the fine.

Mr. Elias stated that there is room to do that. The City can have an Ordinance giving the City Administrator the power to cut the grass and do minor repairs that need to be done to bring the property into conformity then assess that person the cost of doing that work and that assessment can be recorded as a lien also.

Commissioner Shavlan asked how the amount of the fine is determined.

Mr. Elias stated that the statute requires him to take into consideration the nature of the violation, how long the violation has existed, what efforts have been made to correct the violation and whether or not the violator is indicating an intention to correct the situation and bring it into compliance.

Commissioner Shavlan asked if it would be possible to come up with some type of schedule to determine the amount of the fines.

Commissioner Shavlan referred to several cases that have been ongoing for several months with a lot of legal maneuvering; is there any way to bring them to quicker closure.

Mr. Elias stated that there have been several cases where there have been continuances. There have been some legal issues that resulted in continuances. There have been times where the violator and his attorney come to the hearing and request a continuance. What happens if you don't give them the continuance, can you force them to a hearing? If you don't grant the continuance, and you force them to continue, you're going to have an appellate issue. Whereas, if you grant the continuance, and it's got to be the next month, you are probably saving time and money and effort even though it's been postponed for thirty days.

Mr. Elias had one situation where the continuance was for two months and the lawyer had a conflict. He was granted a continuance in October and in trying to schedule the next hearing, he advised him that the next hearing was going to be on November whatever it is. He has another conflict on November 12th so he wouldn't be here in November. It doesn't make much sense to deny the continuance in October and deny the continuance in November so what he did was enter an order granting the continuance in October and schedule the hearing in November. In the event that the attorney conflict isn't resolved, he won't entertain the case until the following month. So the attorney essentially got two continuances.

Commissioner Garnett asked about a repeat offender in her district. How can the City get the work done and get the fines that have been levied? What has to be done to increase the daily fine to \$500? Mrs. Garnett asked Mr. Elias if he would take a look at the file. Mr. Elias said he can't look at the file as he is to remain impartial and he can technically only make a decision on something when it comes before him at the time of the hearing.

Mr. Bonfield explained that a "repeat" offender is a repeat of the same violation within five years.

Mr. Elias added that there has to be a finding of guilt, an adjudication of fault, in order for there to be a repeat offense.

Mayor Finnerty stated that he liked the idea of going out and cutting grass on properties that are in violation and is very interested in following up on this matter. Mayor Finnerty thanked Mr. Elias for taking the time to come before

The Commission and explain in such detail the workings of the Special Magistrate. He, personally, asked that Mr. Elias prosecute to the fullest extend of the law.

Commissioner Shavlan asked Mr. Bonfield about the property Commission Garnett referred to and asked about the fees that are due the City which continue to accrue. Mr. Bonfield will check into that.

Vice Mayor Parent asked if there was a backlog of cases to come before the Special Master or are they pretty much up to date.

Mr. Elias stated that they are pretty much up to date and the agenda is broken down into New Cases and Old Cases.

Vice Mayor Parent asked Mr. Elias to consider shorter continuances if his calendar would allow. There may be some public safety issues that should be pulled out of the "cycle" and heard at an earlier time.

Mr. Elias said he would take his suggestion into consideration, it was a good point. He thanked the Commission for the opportunity to come before them.

There being no further matter to come before the Workshop, the Meeting was adjourned.

City Clerk

Mike Finnerty, Mayor

Minutes Approved on:_____