

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

RICHARD AND MARILYN BARFIELD

Appellant,

v.

TOWN OF JUPITER INLET COLONY,

Appellee.

APPELLATE DIVISION (CIVIL)

Case No.: 502007CA021185XXXXMB
(Consolidated cases 502007CA023241,
502007CA023245, 502007CA023248,
502007CA023249, 502008CA000539)
DIVISION 'AY'

Opinion filed: *Nov 21, 2008*

Appeal from the Town of Jupiter Inlet Colony Code Enforcement Department, Special Magistrate, Glen Torcivia.

For Appellant: Steven Katzman, Esq., and Alexandra Sierra-De Varona, Esq., 7900 Glades Road, Ste. 140, Boca Raton, FL 33434

For Appellee: William P. Doney, Esq., 1665 Palm Beach Lakes Blvd., Suite 610, West Palm Beach, FL 33401

REVERSED and REMANDED.

Appellants, Richard and Marilyn Barfield, have appealed five orders entered by the Code Enforcement Special Master of the Town of Jupiter Inlet Colony ("Town"), and have argued eight grounds for reversal. Because we hold that the Special Master failed to afford the Barfields procedural due process by denying their initial motion to disqualify, it is unnecessary for the Court to address the other issues that the Barfields have raised.

Motions to disqualify code enforcement special magistrates are reviewed under the three-prong standard of review for administrative actions. We must determine whether (1) the parties were afforded procedural due process, (2) the essential requirements of law were observed, and

(3) the administrative findings of judgment were supported by competent substantial evidence. *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

The Barfields argue the Special Master should have recused himself because they had legitimate reasons to believe they would not receive a fair hearing. They explain that a motion to recuse or disqualify an administrative judge, trial judge or special magistrate is legally sufficient when the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial. This standard arises from section 38.10, Florida Statutes and Florida Rule of Judicial Administration 2.330. While we were initially inclined to reverse on the recusal issue under that standard, which was how the issue was framed by the parties, upon further review it is clear that neither section 38.10, Fla. Stat. nor Fla. R. Jud. Admin 2.330 applies to code enforcement special magistrates. *See Florida Water Services Corporation v. Robinson*, 856 So. 2d 1035 (Fla. 5th DCA 2003) (holding that section 38.10 and Rule 2.330, as well as the Administrative Procedures Act, do not apply to the actions of county commissions, even where their actions are quasi-judicial in nature). *See also*, Op. Att’y Gen. Fla. 88-62 (The Office of the Attorney General concluded that the judicial disqualification provisions of Chapter 38, Fla. Stat., cannot be applied to members of a code enforcement board).¹ Section 38.10 and Rule 2.330 apply only to county and circuit judges. In sum, the “reasonable person’s well-founded fear of prejudice” standard does not apply to a motion to disqualify a code enforcement special magistrate.

¹ The Attorney General’s analysis also applies to special magistrates used in lieu of the code enforcement board. Section 162.03, Fla. Stat., authorizes a municipality to give code enforcement boards, special magistrates, or both, authority to hold hearings and assess fines. Jupiter Inlet Colony has established the office of special master, and provides for his or her appointment by the town commission. *See* § 2-702, Jupiter Inlet Colony Code of Ordinances. The special master has jurisdiction to hear and decide cases of alleged violations of any Code provision. *Id.* Thus, there is no distinction between the code enforcement board and the special magistrate that would render the Attorney General’s opinion inapplicable to special magistrates.

Nevertheless, as the Barfields sufficiently briefed the recusal issue under the due process analysis, we find that the Barfields' right to procedural due process was violated by the appointment of the Special Master by the town attorney, rather than by the Town Commission as the Town's ordinances require. The Town is not free to ignore its own laws and regulations. See *Osborn v. Bd. of Cty. Comm'rs*, 937 So. 2d 1119 (Fla. 3d DCA 2006); *Verizon Wireless Pers. Commc'n, L.P. v. The Sanctuary at Wulfert Point Comty. Ass'n, Inc.*, 916 So. 2d 850 (Fla. 2d DCA 2005). Florida Statute section 162.03 allows the Town to adopt, by ordinance, a code enforcement system that gives special masters the authority to hold hearings and assess fines against violators of its ordinances. The Town accordingly enacted section 2-702 of the Town Code of Ordinances, which states that a special master shall be appointed by the Town Commission. The Town did not rebut or even address the Barfields' assertion that the special magistrate was single-handedly selected by the Town's attorney. The Town's failure to follow its own procedure for appointing the special master was a violation of due process that warrants the reversal of all of the special master's orders.

Additionally, given the history and nature of this litigation, it would be ill-advised for the Town Commission to appoint the same special master after following the proper appointment procedures. Although the more formal disqualification standards do not apply in this case, the appearance of impropriety, although perhaps not reversible error, calls for caution and prudence.

It is further ordered that Appellee's and Appellant's motions for appellate attorneys' fees are DENIED.

HOY, ROSENBERG, and COX, JJ., concur.