

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 2015CA014285XXXXMB

KEVIN EASTON,  
Appellant,

v.

CITY OF PALM BEACH GARDENS,  
Appellee.

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Opinion filed: **OCT 25 2016**

Appeal from the City of Palm Beach Gardens Code Enforcement  
Special Magistrate Kevin Wagner

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Appellant, Kevin Easton ("Easton"), appeals an Order Assessing Fine entered by the Special Magistrate of the Appellee, City of Palm Beach Gardens ("the City"), for violating section 79-5 of the City's Code of Ordinances ("the Code"). Easton argues that this Court should vacate the Special Magistrate's Order because he was not provided with proper notice of the specific code violation, i.e. the large piles of dirt on the property, or given a reasonable time to cure it, thus violating his due process rights. We find that the Special Magistrate erred in assessing a fine against Easton because he did not receive notice of the code violation for which

he was ultimately fined.

Easton was cited for violating sections 78-391, 78-395, and 79-5 of the Code.<sup>1</sup> The Notice of Violation (“Notice”) included the following portions of text from section 79-5:

**79-5. Maintenance and appearance standards for all structures and landscaping**

- (a) The owner and operator of all real properties within the city shall maintain the exterior of the premises in such a manner to conform with all city codes and ordinances; to avoid blighting influences on neighboring properties; and to avoid the creation of hazards to public health, safety, and welfare. Properties shall be maintained in accordance with the following standards:
  - (1) The exterior of all premises and every structure thereon, including all parts of the structure and appurtenances where exposed to public view, shall be maintained in good condition and shall not show evidence of deterioration, weathering, discoloration, ripping, tearing, or other holes or breaks. All screened enclosures shall be properly fitted and maintained. All other surfaces shall be maintained free of broken glass, crumbling stone, brick, or stucco, or other conditions reflective of deterioration or inadequate maintenance.
  - (6) The entire yard where exposed to public view must be kept free of debris and accumulations of property and equipment which present an unsightly appearance from usual vantage points on adjacent streets and properties. Outdoor storage and the area used for such storage shall be maintained in a clean, neat, and presentable manner. Outside storage shall be confined to the required rear or side yard setback between a building and an adjacent street or building.
- (b) Structures shall be kept in a clean and sanitary condition and in a good state of repair, including all equipment, sanitary facilities, yards, courts, driveways, lawns, and shrubbery. The owner and occupant shall prevent the

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<sup>1</sup> At the time of the October 29, 2015 code violation hearing, the Special Magistrate found that the property was in compliance with sections 78-391 and 78-395 of the Code and that the only remaining violation was for section 79-5 of the Code. Thus, the text of sections 78-391 and 78-395 are not relevant for purposes of this appeal.

infestation of rodents, vermin, and other pests within the structure he/she occupies or controls.

- (d) Repairs and installations shall be made so as to comply with the provisions of the Florida Building Code and all other applicable regulations, laws, and/or codes. All work shall proceed in a timely fashion and be done in a workmanlike manner.

The Notice indicated that to correct the violation, Easton must “remove materials/equipment from property or public view or properly screen.” Easton did not correct the violation, and the matter was subsequently forwarded to a Special Magistrate for a code violation hearing.

On October 29, 2015, the City held a code violation hearing before Special Magistrate Kevin Wagner (“Special Magistrate”). Based on the evidence and testimony presented at the hearing, the Special Magistrate found that Easton had complied with sections 78-391 and 78-395 of the Code, but remained in violation of section 79-5. The Special Magistrate entered an Order Finding Violation, which required Easton to comply with section 79-5 of the Code. The Order further stated that if Easton did not comply within the time specified, a fine assessment hearing would be held before the Special Magistrate.

At some point between the October 29, 2015 code violation hearing and the code inspection on November 2, 2015, large piles of dirt were placed on Easton’s property at his request. After multiple inspections of the property, the City’s code enforcement officer executed an Affidavit of Non-Compliance, which stated that the property was not in compliance with section 79-5 of the Code.

On November 30, 2015, the City held a Fine Assessment Hearing before the Special Magistrate. Although Easton did not attend the hearing, his counsel, Eunice Baros, appeared on his behalf. The City’s code enforcement officer testified that although follow up inspections showed that progress was made, the violation of section 79-5 remained. Specifically, the officer

testified that the remaining violation was for the large dirt piles on Easton's property. Although the officer acknowledged that the dirt piles were placed on the property after the code violation hearing on October 29, 2015, he testified that it was continuous of the section 79-5 violation.

During closing arguments, Easton's counsel argued that the Special Magistrate did not have jurisdiction because the dirt piles were not placed on the property until after the October 29, 2015 code violation hearing, and therefore were not a part of the Special Magistrate's Order Finding Violation. In response, the City argued that the Special Magistrate's order was to comply with section 79-5 of the Code and that the property was not in compliance with section 79-5. The Special Magistrate ultimately found that the property continued to be in violation of section 79-5 of the Code. He subsequently entered an Order Assessing Fine, setting the fine in the amount of \$200 per day until the property was in compliance.

Easton argues that the City violated his due process rights because he was not provided with proper notice of the specific code violation. Specifically, Easton asserts that the dirt piles were not placed on the property until after the October 29, 2015 code violation hearing, and therefore the City should have issued a second notice of violation for the dirt piles. The amount of due process required in a quasi-judicial hearing "is not the same as that to which a party to a full judicial hearing is entitled, and such hearings are not controlled by strict rules of evidence and procedure." *Seminole Entm't, Inc. v. City of Casselberry*, 811 So. 2d 693, 696 (Fla. 5th DCA 2001) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993)). In general, "[a] quasi-judicial hearing meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard." *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). "[T]he parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which

the commission acts.” *Id.* (citing *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So. 2d 648, 652 (Fla. 3d DCA 1982)).

It is undisputed that Easton received notice of the Fine Assessment Hearing, and although he was not present at the hearing, counsel appeared on his behalf. However, Easton was ultimately fined for the large dirt piles on his property, which were not placed on the property until after the code violation hearing. Thus, the Court finds that the City should have issued a separate Notice of Violation for the dirt piles. To the extent the City argues that Easton was afforded due process because he was told that he needed to “remove materials/equipment from property or public view or properly screen,” the Court finds that this was insufficient to notify Easton that he needed to remove the dirt piles prior to the fine assessment hearing in order to comply with the Code.

Accordingly, we **REVERSE** the Special Magistrate’s Order Assessing Fine.

BARKDULL, GILLEN, and SASSER, JJ., concur.

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KEVIN EASTON,  
Appellant,

Appeal from the City of Palm Beach Gardens Code  
Enforcement;  
Special Magistrate Kevin Wagner

v.

CITY OF PALM BEACH GARDENS,  
Appellee.

Appealed: December 31, 2015

DATE OF PANEL: SEPTEMBER 19, 2016

PANEL JUDGES: BARKDULL, GILLEN, SASSER

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
<u>Jeffrey D. Gillen</u> <u>10/20/16</u>	)		)		)
<u>J. Barkdull</u> <u>10/20/16</u>	)		)		)
<u>J. Sasser</u> <u>10/24/16</u>	)		)		)
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