

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 2015CA014288XXXXMB

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

For Appellant: Eunice Baros, Esq.  
Eunice Baros Law, LLC  
11390 Prosperity Farms Road, Suite 204  
Palm Beach Gardens, FL 33410  
eunicebaroslaw@gmail.com

For Appellee: Abigail Forrester Jorandby, Esq.  
Lohman Law Group, P.A.  
601 Heritage Drive, Suites 232-232A  
Jupiter, FL 33458  
abby@lohmanlawgroup.com

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 the City never provided him with notice of the specific code violation, i.e. the failure to re-sod the yard, and did not give him a reasonable time to cure it, thus violating his due process rights. Easton further argues that even if he had notice, the record evidence shows that he complied with the Code by planting grass seed. 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, and therefore do not need to address the issue of whether the planting of grass seed complied with the Code.

Easton was cited for violating section 79-5 of the Code. The Notice of Violation ("Notice") included the following portions of text from section 79-5:

55). The 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 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 all outdoor debris & materials (ladder, equipment, etc.) from property or from 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 was 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. After multiple inspections of the property, the City’s code enforcement executed an Affidavit of Non-Compliance which stated that as of November 9, 2015, 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 at the hearing regarding the code violations. He stated that although follow up inspections showed that progress was made, the violation of section 79-5 still remained. The officer testified that Easton had removed the materials and piles of dirt from the property, but as a result of removing the dirt, a portion of the landscaping was unmaintained and needed to be re-sodded. Thus, he stated that the property remained in violation of section 79-5 of the Code for the portions of bare dirt on the property.

At the conclusion of the hearing, the Special Magistrate orally announced his ruling, stating in part:

All right (sic). Case 15.05.7308 is a little more difficult. I recognize that [Easton] has complied largely with the removal of outdoor debris and material and taken the dirt which -- and other things off the property, and I recognize that is a positive step. I also am cognizant of the City's position that uncovered dirt is not wholly in compliance with 79-5. I believe that's a correct interpretation of the City code, as I understand it.

So I'll make these findings, that the property continues to be in violation of section 79-5, but I recognize the efforts of [Easton] for bringing the property into compliance. And I also believe that the continuing noncompliance is -- does not warrant a fine of \$250. I believe it warrants a fine of \$25 per day.

(Tr. 19:4-18.) A written Order Assessing Fine was entered by the Special Magistrate, reflecting his oral ruling.

Easton argues that the Special Magistrate's Order Assessing Fine violated his due process rights because he was not provided with proper notice of the specific code violation, i.e. the failure to re-sod the property. Specifically, Easton asserts that although he remedied the code violations by removing materials and piles of dirt from the property, the Special Magistrate still found him in violation of the Code because there was now bare dirt on the property that was "unmaintained." Thus, Easton argues that the violation for which he was fined did not even exist until after he remedied the violations set forth in the notices.

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, his counsel, Eunice Baros, appeared on his behalf. However, it appears that Easton was ultimately fined for failing to re-sod the property once he removed the dirt piles. Thus, the Court finds that Easton received inadequate notice for two reasons: (1) the City’s Notice stated the corrective action that Easton must take to comply with the Code, and did not specify that Easton must re-sod the property to come into compliance; and (2) the City did not specifically cite Easton for failure to maintain landscaping.

First, although the code language provided to Easton stated, “Structures shall be kept in a clean and sanitary condition and in a good state of repair, including all . . . yards . . . lawns, and shrubbery,” the corrective action stated that Easton needed to “remove all outdoor debris & materials (ladder, equipment, etc.) from property or from public view or properly screen.” Thus, although the City argues that Easton was on notice that he had to keep his lawn in a “good state of repair,” the City explicitly instructed him to remove debris and materials from the property to come into compliance. As acknowledged by the City’s code enforcement officer at the fine assessment hearing, Easton complied with the corrective action by removing the materials and piles of dirt from the property.

Second, the Notice only cited select portions of section 79-5. Notably, the City did not cite Easton for violating section 79-5(5) of the Code, which provides:

- (5) Property adjacent to dwelling structures shall be kept free from growth of weeds, rubbish, trash, and other refuse, and **landscaping shall be maintained in good**

**condition consistent with the requirements of section 78-329 of the Code of Ordinances.** Provided, however, that the irrigation requirements of section 78-329 shall not be interpreted to require existing residential properties to install irrigation if such installation was not required at the time the property was developed.

Section 79-5(5), City of Palm Beach Gardens Code of Ordinances (emphasis added). Further, the relevant portion of section 78-329 of the Codes states in part:

- (a) *Required.* All landscape areas shall be maintained on a regular basis, to include weeding, watering, fertilizing, pruning, mowing, edging, mulching, replacement of dead or missing landscaping.

Section 78-329(a), City of Palm Beach Gardens Code of Ordinances. The City never included these portions of the Code in any of the notices that it sent to Easton.

Although Easton focused on how the planting of grass seed should constitute compliance with the Code, it is clear that he had never been expressly required by the City, in any prior order, to plant grass seed or re-sod the lawn. The mere fact that Easton was separately required under sections 79-5(5) or 78-329(a) to maintain his landscaping cannot allow the City to circumvent the code enforcement procedures outlined in Chapter 162 and fine Easton for failing to abide by those provisions without first citing him and providing him a formal opportunity to correct the problem. Therefore, the Court finds that the City did not provide notice of the violation for which Easton was ultimately fined, thus violating his due process rights.

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

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

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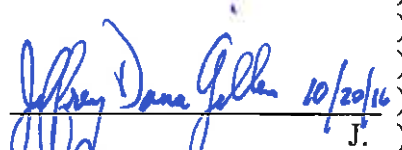
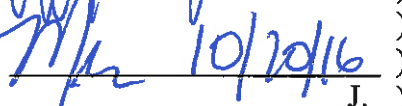
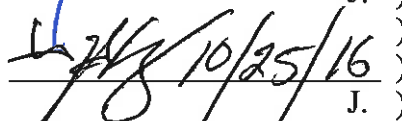
Appealed: December 31, 2015

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	)
 10/20/16	)		)		)
J.	)	J.	)	J.	)
 10/20/16	)		)		)
J.	)	J.	)	J.	)
 10/25/16	)		)		)
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