



CITY OF NORTH PORT
SARASOTA COUNTY, FLORIDA
4970 City Hall Boulevard
North Port, FL 34286

CODE ENFORCEMENT HEARING

CITY OF NORTH PORT, FLORIDA

}

Petitioner,

}

vs.

}

THE WOODLANDS COMMUNITY
DEVELOPMENT DISTRICT C/O

}

Respondent(s)

}

CASE NO.: 16-2036
16-2037

ADDRESS OF VIOLATION:

}

Plantation Blvd.Address Not Required Row

}

North Port, FL

}

PARCEL ID.: 1094003401

}

CERTIFIED MAIL NO.: 70161370000235063989

AMENDED ORDER AFTER REHEARING

Upon hearing testimony of the witnesses, the City of North Port ("City"), and the Woodlands Community Development District ("District") in the initial hearing, the rehearing, review of the briefs, and supplemental briefs submitted by the parties, and upon review of the City Commission meeting videos relating to the approval of the Plat and the Resolution accepting the dedication of the Plat held on March 23, 2015, and November 9, 2015, the Hearing Officer makes the following findings and rulings:

This case involves grassy strips and landscaping located within the right-of-way ("ROW") of a portion of Plantation Boulevard located within the City limits of the City of North Port. The length of ROW where the grassy strips and landscaping is located is approximately three miles. There was uncontroverted testimony and evidence presented at the hearing conducted on May 26, 2016, that on the date of inspection the height of the grass within the subject ROW did not meet the standards of the City's Code for Maintenance.

Sec. 42-21 NORTH PORT CITY CODE - Excessive growths; dead trees

- (b) It shall be unlawful for any owner of a developed or undeveloped lot to permit the excessive growth of shrubs, trees, bushes or any other natural or cultivated species of foliage beyond the legal confines of said lot so as to impinge upon a public right-of-way such as sidewalks and/or streets.

(Code 1990, § 110-4; Ord. No. 2012-27, § 1(1.01), 2-11-2013)

Sec. 42-24 NORTH PORT CITY CODE Responsibility of property owners; penalties for offenses; other remedies

- (2) Open swale drainage (with sidewalk) – From edge of the pavement to the owner's property line (see exhibit B).
 - a. Maintain and replace as necessary the culvert pipe beneath any driveway crossing the swale in a manner such as not to impede or interfere with the stormwater drainage function of the swale. Provided, however that the cost of the culvert replacement as a result of a drainage improvement or modification initiated by the city shall be at the city's expense.
 - b. Properly mowing the grassed area to maintain a neat appearance, including the removal of grass, weeds, bushes, sand, silt and debris at both ends of any driveway culvert pipe to effectively maintain flow of stormwater through the culvert.
 - c. Maintain the sidewalks adjoining the property by keeping the sidewalks in a clean and sanitary condition which includes mowing and edging grass and weeds, both between the sidewalk joints and along side the edge of pavement.

(Code 1990, § 110-7; Ord. No. 2010-09, § 1(1.01), 7-12-2010)

There was also testimony that a property owner within the District has mowed the grassy strips at least once, but is under no legal obligation to do so. There was also photographic evidence and testimony regarding the accumulation of debris and trash in these sodded and landscaped areas.

Sec. 42-24 NORTH PORT CITY CODE – Accumulation of debris.

- (a) It shall be unlawful for any owner of an occupied or an unoccupied lot to accumulate or permit the accumulation of, including, but not limited to, lumber or any other building materials, tires, parts of vehicles, inoperable vehicles, unusable household items, or any other items or equipment

which create a breeding place for any vermin or mosquitoes, emit noxious odors or create a public nuisance or other unsanitary or unsafe conditions or create a fire and/or health hazard or, in general appearance and condition, create a slum appearance which tends to have a decreasing value effect on the neighboring property and premises.

- (b) It shall be unlawful for any owner of an undeveloped lot to use or permit such lot to be used as a disposal area for any lumber or any building materials, tires, parts of vehicles, inoperable vehicles, unusable household items or any other type or character of material and/or equipment or any other items or equipment which have no further value.

(Code 1990, § 110-5)

The District's main argument is that it is immune from the Code Enforcement process due to its status as a Community Development District, and states reasons why the Code Enforcement Action should be dismissed against it. Specifically the defenses relate to (1) ownership, (2) jurisdiction, and (3) enforceability.

The District contends that it is not the owner of the subject strips of land and, therefore, could not be responsible for its maintenance. On or about February 29, 2016, a plat dedicating the ROW was accepted by the City subject to certain conditions. Right-of-way dedications serve two distinct purposes. (1) They transfer ownership of improvements located within the ROW to the government entity accepting the dedication, transferring the maintenance responsibility to the government entity for the improvements, and (2) they grant an easement to the government entity to maintain the roadway and to provide for other public purposes as defined in the dedication.

In this case, only the roadway and associated bike and pedestrian paths as well as the street light system was transferred to the City. All other utilities located within the ROW were retained by the respective owner of that utility including the irrigation system built and maintained by the District. The Resolution accepting the dedication clearly stated that:

All landscaping within the right-of-way shall be the responsibility of the Woodlands Community Development District.

For the reasons and facts set forth above, it is clear that the District is responsible for maintenance of the landscape and grassy strips located within the ROW, and that subject to the easement granted to the City, the District retains the underlying fee simple ownership of the dedicated ROW.

Next, the District takes the position the Hearing Officer does not have jurisdiction over the District because it is not a "person" as defined under Florida Statutes. The definition of person in §101(3), Fla. Stat. (2016) is broadly defined to include "all other groups" and would include any independent community development district. Clearly, the District is a person in that it has the capacity to invoke the court system as a plaintiff. Therefore, the Hearing Officer determines that he had jurisdiction to hear the case.

Finally, the District's position is that the fines and liens are not enforceable against it citing §190.044 Fla. Stat. which states in part:

(a) all district property shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against such property, nor shall any judgment against the District be a charge or lien on its property or revenues.

Section 162.09(3) Fla. Stat. states in part:

A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except of enforcement purposes.

While the Hearing Officer is typically not concerned with the City's ability to collect a fine imposed by the Hearing Officer, or the creation of a lien on property owned by the violator, in the instant case it is clear that there is no legal mechanism to collect a fine from the District or lien property owned by the District, so the imposition of a fine would be futile.

However, North Port City Code, Part II, Chapter 2, Article IX, Code Enforcement, Section 2-509 – Powers of the hearing officer provides in part:

The hearing officer shall have the power to:

- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance of the City Code.

Based upon the District's ownership of the underlying fee ownership within the ROW and its initial obligation to maintain landscaping on District owned property, as well as the clear instruction contained in the City's Resolution accepting the ROW dedication that the maintenance of landscaping would remain with the District, the Hearing Officer finds that the District is clearly responsible for the maintenance of the landscaping and grassy strips within the ROW, and Order the District to budget and expend funds to maintain the landscaping and grass located within the ROW.

The Hearing Officer makes the following specific Findings of Fact regarding the maintenance, responsibilities for the road, sidewalks, and bike lanes; the street lights; the irrigation system; and the sod and landscape located within the boundaries of the ROW:

1. A developer agreement between the developer(s) of a geographic area larger than the boundaries of the District and the City was executed. The developer obligated itself or a community development district to be created to construct Panacea and Plantation Boulevards as collector roads, and that upon completion, to dedicate those roadways and associated bike and pedestrian paths to the City.
2. That the roadways and associated bike and pedestrian paths were completed in 2002.
3. That the District constructed the roadways and associated bike and pedestrian paths.

4. That the District has maintained the roadways and associated bike and pedestrian paths until recently when the City accepted the dedication and assumed the responsibility of the maintenance of those improvements.

5. That the District constructed and maintained a street lighting system along Plantation and Panacea Boulevards, said maintenance continuing until the acceptance by the City in its Resolution adopted on November 9, 2015.

6. That the District constructed and maintains a comprehensive irrigation system which includes laterals and hundreds of sprinkler heads within the ROW.

7. That in early 2015, City staff and District staff began the process of platting the ROW and discussing maintenance responsibility for the improvements located within the ROW as well as the landscaping and sod.

8. The early discussions between staff was leading to the City accepting maintenance responsibility for all improvements located within the ROW as well as landscaping and sod.

9. At some time between the City Commission meetings of March 23, 2015, and November 9, 2015, City staff changed its position regarding its willingness to accept maintenance responsibility for the street lights and landscaping within the ROW.

10. At the City Commission meeting of November 9, 2015, an attorney for the District urged the City Commission to include the operation and maintenance cost of the street lighting as well as the maintenance cost of the landscaping in the acceptance of the dedication of the ROW.

11. The City Commission chose to accept the street lighting operating costs and maintenance, but chose to leave the maintenance responsibility for the landscaping within the ROW with the District.

The District argues that the language of the Plat dedication controls and the City cannot limit what it decides to maintain in the Resolution accepting the dedication. There are other examples within the City of North Port where Community Development Districts maintain landscaping within the City rights of way.

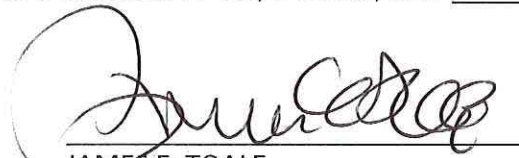
The Hearing Officer finds that there is a violation of Section 42-21(b) in that the District is permitting excessive growth to impinge upon the sidewalks, roadway, and bike lanes.

The Hearing Officer finds no violation of Section 42-24 of the City Code since there was no testimony or evidence submitted that the District owns the property adjacent to the ROW.

The Hearing Officer finds that the District has violated Section 42-22 of the City Code in that it has allowed the accumulation of household trash which will tend to have a decreasing value effect on the neighboring property and premises.

The District is ordered to submit a plan of maintenance to the City of North Port no later than December 1, 2016, which shall include a copy of a contract for maintenance of the landscaping located within the ROW.

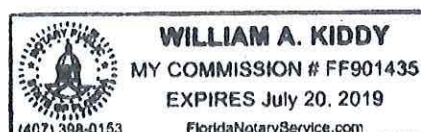
DONE and ORDERED, for the City of North Port North Port, Florida, this 27th day of October, 2016.


JAMES E. TOALE
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the AMENDED ORDER AFTER REHEARING has been furnished to Respondent(s) by **Certified Mail/Return Receipt Requested**, at **2634 CYPRESS RIDGE BLVD #102 WESLEY CHAPEL FL 33544** on this 27th day of October, 2016


SERVER-CITY OF NORTH PORT





CITY OF NORTH PORT
SARASOTA COUNTY, FLORIDA
4970 City Hall Boulevard – North Port, FL. 34286
Telephone: (941) 429-7186 Fax: (941) 429-7195

REQUEST FOR RE-INSPECTION

(Please Print)

Case No. : 16-2036 & Case No. : 16-2037

Parcel ID No.: 1094003401

TODAY'S DATE: _____

REAL PROPERTY ADDRESS: Plantation Blvd. PARCEL ID.: 1094003401
(Location of Violation)

PROPERTY OWNER: THE WOODLANDS COMMUNITY DEVELOPMENT DISTRICT C/O

COMPANY NAME: _____

CURRENT MAILING ADDRESS: 2634 CYPRESS RIDGE BLVD #102 WESLEY CHAPEL FL 33544

TELEPHONE NUMBER(S): () -- DAY

() -- EVENING

() -- CELL

() -- FAX

E-MAIL ADDRESS: (Optional) _____

SIGNATURE OF PROPERTY OWNER: _____
(SIGNATURE REQUIRED)

By signing above, I specifically authorize City of North Port, Property Standards Division staff to enter my property for the purpose of performing the re-Inspection which I have requested.