



CITY OF ORMOND BEACH

Police Department • Neighborhood Improvement Division • 170 West Granada Boulevard • Ormond Beach, FL 32174-5209
(386) 676-3352 • Fax (386) 615-7074

March 1, 2023

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

RE: Case No. 22-112237 (33 Cypress Cir., Ormond Beach, FL)
Special Magistrate Hearing – Judge's Order

Enclosed please find a copy of the Judge's Order from the Special Magistrate's Hearing of February 27, 2023.

Please be advised that payment of the outstanding case costs as indicated on the enclosed Special Magistrate Order must be remitted to the City of Ormond Beach, Finance Department, 22 South Beach Street, Ormond Beach, FL 32174.

Should you have any questions, please feel free to contact our office at 386-676-3352.

Thank you.

Barbara Radcliffe, Administrative Assistant
Neighborhood Improvement Division

Enclosure

Certified Mail: 9214 8969 0099 9790 1646 5481 51

**BEFORE THE SPECIAL MAGISTRATE
OF THE
CITY OF ORMOND BEACH, FLORIDA**

**CITY OF ORMOND BEACH,
FLORIDA,**

Petitioner,

vs.

CASE NO.: 22-112237

LOCATION OF VIOLATION:

33 Cypress Circle.
Ormond Beach, FL
("the Property")

**MICHAEL HENRY and
KATHERINE HENRY,**

Respondents.

PARCEL NO.: 4223-02-06-0130

_____/

ORDER FINDING VIOLATION

This cause having come on to be heard before the Special Magistrate of the City of Ormond Beach, Florida, February 27, 2023, and upon the evidence and sworn testimony presented the Special Magistrate makes the following findings of fact and conclusions of law:

1. The Special Magistrate has jurisdiction of the parties and the subject matter of this cause.
2. The City of Ormond Beach presented substantial evidence of violation of *City of Ormond Beach Land Development Code*, Chapter 2, Article III, Section

2-50(n)(1)(a): All fences shall require a permit prior to installation or erection. It shall be unlawful for any person to erect a fence within the city without having first made application for and having been issued a permit. Respondents installed a fence without application for or obtaining a permit.

3. Respondent, Katherine Henry, appeared and testified at the hearing. Respondent made the following legal arguments:

a. Respondents' constitutional property rights were violated under the State of Florida and U.S. Constitution. This argument was determined to be without merit.

b. The City of Ormond Beach has "cherry-picked" Respondents' property for citation without citing other property violations within the same area. This argument was determined to be without merit.

c. The application of general zoning law to Respondents' property does not substantially advance a legitimate state interest. This argument was determined to be without merit.

4. At the time of the hearing, the property was not in compliance. Photos of the subject fence as of the date of the hearing are attached hereto as Exhibit A.

5. Upon finding a code violation, the Special Magistrate is authorized to impose a fine that does not exceed \$250 per day and may authorize a fine for each day

the violation continues past the date specified in this Order for compliance. Fla. Stat. Section 162.09 (2022). In addition, the Special Magistrate is authorized to issue an order having the force of law to command whatever steps are necessary to bring a violation into compliance. Fla. Stat. Section 162.08(5)(2022). Pursuant to Chapter 2, Article VII, Section 2-257(b), *City of Ormond Beach Code of Ordinances*, the City is entitled to its costs of prosecuting the code violation in which a violation is found.

Thereupon, and in consideration thereof, it is

ORDERED AND ADJUDGED as follows:

A. Respondents violated *City of Ormond Beach Land Development Code*, Chapter 2, Article III, Section 2-50(n)(1)(a). The citation of one hundred dollars (\$100.00) shall be waived. Respondents shall pay the city's costs of twenty-three and 56/100 dollars (\$23.56) no later than March 27, 2023. Respondents shall bring this violation into compliance no later than March 27, 2023 by either: 1) obtaining an approved fence permit and pass a final inspection; or 2) removing the fence from the property. **IF RESPONDENTS FAIL TO BRING THE PROPERTY INTO COMPLIANCE BY MARCH 27, 2023: 1) A FINE OF TWENTY-FIVE DOLLARS (\$25.00) PER DAY SHALL ACCRUE BEGINNING ON MARCH 28, 2023; AND 2) THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY ON OR AFTER APRIL 10, 2023 TO REMOVE AND DISPOSE OF THE UNPERMITTED FENCE WITH ALL COSTS THEREOF TO BE ASSESSED AGAINST THE RESPONDENTS. IN ADDITION, SHOULD THE CITY**

REMOVE AND DISPOSE OF THE FENCE, THE CITY SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS ASSOCIATED WITH THE REMOVAL.

B. It is the Respondents' responsibility to contact the City of Ormond Beach Neighborhood Improvement Division to schedule a re-inspection of the property to confirm compliance and the date thereof.

C. Failure to timely pay the fine and costs may result in a certified copy of this Order being recorded in the Public Records of Volusia County, Florida which if so recorded shall constitute a lien against the subject property and upon any other real or personal property owned by Respondents. Respondents shall be responsible for all charges incurred to record any lien, or satisfaction of lien, with the clerk of court.

ORDERED *nunc pro tunc* February 27, 2023.

DATED: March 1, 2023

BY: H. Pope Hamrick, Jr.
H. POPE HAMRICK, JR.
CITY OF ORMOND BEACH
SPECIAL MAGISTRATE

Copies to:
Ann-Margret Emery, Deputy City Attorney
Chris Mason, Neighborhood Improvement Manager
Respondents



02.21.2023 13:54



02.21.2023 13:54

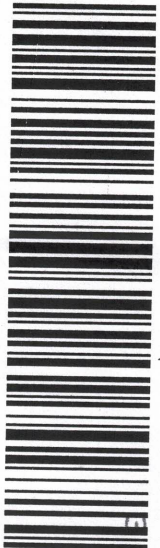
EXHIBIT
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Barbara Radcliffe
City of Ormond Beach/NID
170 W Granada Blvd
Ormond Beach, FL 32174

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