

MINUTES OF A REGULAR MEETING OF THE SPECIAL MAGISTRATE OF THE CITY OF FORT PIERCE, FLORIDA, HELD IN THE CITY HALL COMMISSION CHAMBERS, 100 NORTH U.S. #1, FORT PIERCE, FLORIDA, AT 9:00 A.M. ON WEDNESDAY, **APRIL 18, 2018.**

Present: Fran O. Ross, Special Magistrate
Staff Present: Margaret Arraiz, Code Compliance Manager
Colleen Greer, Code Enforcement Clerk
Heather Debevec, Code Enforcement Officer
Isaac Saucedo, Code Enforcement Officer
Janey Vanderhorst, Sr Code Enforcement Officer
Iola Mosley, Sr Asst City Attorney
Attendees: Jose Maldonado
Olin Carilus - Sec Guard
Attorney John D Culverhouse

1. **CALL TO ORDER:
9:10 AM**
2. **PLEDGE OF ALLEGIANCE**
3. **ADMINISTRATIVE BUSINESS**
 - A. **ADMINISTRATION OF OATH TO DEPARTMENTAL WITNESSES:**
Code Compliance Manager: Margaret Arraiz
Code Enforcement Officer: Heather Debevec
Code Enforcement Officer: Isaac Saucedo

ADMINISTRATION OF OATH TO CASE WITNESSES:
Witness: John D Culverhouse II
Witness: Charlene Adair
Witness: Christopher Hodge (signed petition)
Witness: Janice Hodge (signed petition)
Witness: John Wolsiefer (signed petition)
Witness: Sylvia Krchnak
Witness: John Northen (signed petition)
Witness: Sally Griffith (signed petition)
Witness: David Sowerby
Witness: Dan Deiulio
Witness: Charles Hayak
Witness: Richard Reed
 - B. **IDENTIFICATION OF CASES IN COMPLIANCE OR RESCHEDULED**
4. **PUBLIC HEARINGS - CITATIONS**
5. **PUBLIC HEARINGS - VIOLATION CASES**

6. PUBLIC HEARINGS - MASSEY HEARINGS (FINE REDUCTIONS)

7. PUBLIC HEARINGS - LIEN REDUCTION REQUESTS

8. OTHER CASES

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| 18-0139 CE | 1635 Thumb Point Dr | Culverhouse, John | Margaret Arraiz |
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| Case Initiated: | January 16, 2018 | Type of Presentation: | Nuisance Appeal |
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| VIOLATOR John B Culverhouse Sr John B Culverhouse Jr 1635 Thumb Point Dr Fort Pierce, FL 34949 | |
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Sec. 16-46. - Maintenance of nuisance on property prohibited.

Sec. 16-47. - Removal of nuisance.

Sec. 16-48 – Nuisance as a Condition

(6) Interferes with the comfortable and quiet enjoyment of life or property.

(7) Current condition of property tends to or could depreciate the value of property of any person.

(9) Any trash, litter, debris, garbage, bottles, paper, plastic, metals, cans, rags, offal, bricks, concrete, lumber, building materials, or dead or decaying plants or animals of any kind.

Section 16-48 – Nuisance as an Object

(1) Junk, consisting of unsightly, worn-out or discarded material of little or no residual value including scrap metal, scrap lumber, wastepaper products, discarded building materials or other debris, the accumulation of which has an adverse effect upon neighborhood or city property values, health, safety or general welfare.

(6) Any building or structure, or part thereof, which is in a dilapidated, unsanitary or unsafe condition, or which constitutes a fire hazard.

(7) Any building, structure, lot, place or location where any activity in violation of law is conducted, performed, maintained or allowed.

Attorney at Law Culverhouse asked that all witnesses be sworn at the same time along with himself. He said Mrs. Arraiz had told him prior to today's hearing that the only people who would be testifying was Mr. and Mrs. Hodge and Charlene Adair. He objected to the other people as witnesses and felt this was a trial by ambush. Mrs. Arraiz said she only knew of the Hodges and Ms. Adair but this is a publicly advertised hearing and they had the right to attend and testify. Special Magistrate Ross said she had reviewed the file and many of the people present had signed the petition. She said those people who intended to testify would be sworn in. The witnesses were sworn in. Special Magistrate stated for the record that she ran into Mr. Reed, Commissioner Sessions and Ex-Commissioner Nelson at the courthouse a week or so ago and the subject of this case was brought up; however, she did not say anything.

Mr. Culverhouse objected again to anyone who was not identified to him and that he was not being granted due process. Special Magistrate Ross said she would recess to give Mr. Culverhouse time to interview the witnesses. He questioned the constitutionality of the IPMC being flawed and objected to it. He asked that she reserve ruling on his objections until the hearing is over. She said she noted the objections.

Assistant City Attorney Mosley stated that due process involves notice and the opportunity to be heard and both requirements have been met. Secondly, this is a fact finding tribunal and not the final determination hearing. That will be in front of the commission and every one of these

individuals will have an opportunity to speak at the commission meeting however the matter is decided. There is simply no denial of due process.

THE HEARING WAS RECESSED TO ALLOW ATTORNEY CULVERHOUSE TO QUESTION THE WITNESSES. ASSISTANT CITY ATTORNEY MOSELY WAS PRESENT DURING QUESTIONING.

Following the recess, Attorney Culverhouse objected to the insufficiency of the Affidavit of Posting dated January 17, 2018 as it was signed and dated January 17, 2017. Per the International Property Maintenance Code as adopted by the city, the photos are supposed to be dated stamped. This was not followed and he made a motion to dismiss the proceedings and requested the Special Magistrate to reserve ruling on it. She agreed to do that and the proceedings continued.

Code Compliance Manager Arraiz read the facts of the case. She submitted a copy of the time line of events and presented photos of the hurricane damage. Part of the nuisance is that it has an adverse affect on the community and nothing has been done since 2005. At this time, Mr. Culverhouse asked that Special Magistrate invoke the rule of sequestration. She agreed and all witnesses left the chambers.

Mrs. Arraiz continued her presentation submitting Exhibits 1-3, which are photos showing the condition of the property from 2005 through 2016. Due to non-compliance with the City Code, fines started in October 2007 at \$250.00 per day. The lien was recorded in November 2007. Numerous permits were granted over several years but expired without the work being completed. Eventually, the structure was demolished in February 2014. In March 2014 a permit application to rebuild was submitted and granted. In June 2015, the city received a petition signed by 45 of the neighboring property owners, which was submitted as the City's Exhibit 4. Mr. Culverhouse objected to the petition being admitted as evidence but would accept it as hearsay. In January 2016, the City received a request for a partial release from Mr. Culverhouse from the spreading lien. This was approved by the City Commission for the settlement amount of \$5,000. and the lien would remain in affect against the subject property. The City Attorney finalized an agreement to release all liens from the property.

In February 2016, an action plan outlining steps to be taken with specific deadlines, which the City submitted as Exhibit 5, was agreed to by all parties. This agreement specifically states that "Failure to comply will result in the revocation of the permit, condemnation of the structure and the ordered removal of all structural elements on the property". This agreement was signed by Mr. Culverhouse and Marc Meyers and was notarized. A friendly letter, submitted as City's exhibit 6, was sent by Building Official Marc Meyers in April 2016 because Mr. Culverhouse failed to adhere to the timeframe agreed upon. In January 2018, due to continued non-compliance with the agreement, the City has taken steps to declare the property as a nuisance and begin the condemnation of the building. The City submitted exhibit 7: Resolution No. 17-R3 - Rules of Procedure for Condemnation and Demolition, exhibit 8: photos dated January 17, 2018 of the posting of the property in question declaring the property a nuisance and the condemnation notice as well as the signed and notarized Affidavit of Posting and exhibit 9: signed certified mail return receipts addressed to Mr. Culverhouse. Mr. Culverhouse objected to each item introduced as evidence and called it hearsay. He again pointed out the date on the Affidavit was signed as January 2017 rather than January 2018. Mrs. Arraiz said this was a scrivener's error. Attorney Mosley asked if Mrs. Arraiz witnessed the signing, which she had, and asked on which day it was signed, which she stated was January 17, 2018. Special Magistrate said she would reserve her ruling for after Officer Debevec testified. Mrs. Arraiz submitted photos dated February 8, 2018, as composite Exhibit 10, showing the present condition of the property. She summarized the action taken again stating the owner has the opportunity to appeal and that is why we are here today.

The City called Janice Hodge, 1622 Thumb Point Dr, as a witness for the City. Under direct examination by Sr. Assistant City Attorney Lola Mosley, Ms. Hodge stated she lived there since 2011 and was aware of the property located at 1635 Thumb Point. She said her property was across the street and every time she leaves her house she sees the property which has been an eyesore since she's before they lived there. The owner of the property has neglected it for as long as they have owned the property. When asked how her security in her own home was affected due to the property across the street, Ms. Hodge said because it's very unkept and although there are signs saying "no trespassing" there's been many trespassers, people from all over driving onto the property bringing coolers, fishing, leaving trash and debris. There are youth and adults and they use the property as recreational. She questioned whether roof rats were coming across the street to her house and stated that she doesn't walk on the property but she has observed a boat there with people working on it. A contractor was hired to build the house and he used the property as a dump site. This went on consistently for the past 5 years. She called them lackies as they had total disregard for the people living on the street. ACA Mosley asked if their guests made comments about the property and how often and she said 20 to 30 times. ACA Mosley asked Ms. Hodge to describe what an eyesore is and she said the grass is unkept, no paved driveway, no roof, half built walls, no doors, etc. It's a house going nowhere. ACA Mosley asked Ms. Hodge to validate the petition and if she signed it. Ms. Hodge said she was the one who sent the letter to Marc Myers, Linda Cox, and Peggy Arraiz as well as others at the City. Throughout the testimony Mr. Culverhouse made multiple objections, which were noted on the record.

Under cross examination by Attorney Culverhouse, he asked Ms. Hodge if she recalled the emails between them about the storage trailer. She said the storage trailer was an issue for years but agreed that he had it removed at this time. He next asked if she recalled the email about Steve Weaver using the property as a dump site and that in May 2017 he had fired Mr. Weaver, asking him to remove all of the debris. She said she did not have knowledge of that but mentioned all of the other emails she had sent to him but he did not respond. When asked if he authorized her in writing to call the police if she saw anyone on the property, Ms. Hodge stated that has called the police on trespassers but the police said she doesn't have the authority to do anything. She said it has taken years to do anything and he said since the time they started emailing each other it only took a few months, to which she agreed. Attorney Culverhouse asked how the property disturbed her quiet enjoyment of her property and she said it's ugly and attracts people who do not live in the neighborhood. She said she doesn't keep a log or journal when he asked how many each week and each month. In response to being asked about the value of her home being affected, she did not know because she wasn't looking to sell the property. He asked if she was aware the property had increased in value each year. She said she assumed it did but she did have concerns that it will impact the value of the entire property on the street when the time comes to sell if desired.

Ms. Mosley redirected by asking how many emails she received from Mr. Culverhouse. Ms. Hodge replied about 3 or 4 times but there were at least 3 or 4 more sent with no replies. She was asked how many times she called the police and she replied 4 times over several years but no one was arrested. She was asked why she had no authority to call the police and she said she was not the owner of the property.

Christopher Hodge, 1622 Thumb Point Dr. was called as a witness for the City. He has lived at this address since September 2011 and when asked if he is familiar with 1635 Thumb Point and he said yes because it has been a nuisance ever since he lived there. He mentioned the storage unit being on the property and used as a dump site by the contractor. There were trucks and equipment all over. He was asked how offensive he found the property and he said very offensive because the property was supposed to be built on but nothing was being done. He said it would have been different if he thought something was going to be done. Every six months we found the building permit expired and everything would start again. We were concerned if a hurricane came the debris would be blown all over and create damage on ours

and other residents property. Regularly we would see people jumping over the fence and fishing on the property. I saw a boat that had people working on it. ACA Mosley asked how many times friends had made comments regarding the property and he replied 3 or 4 times. Ms. Mosley asked what safety concerns he had in regards to people coming onto the property. He said its been a while now because there has been attempts at burglary, seeing strangers, there's been several instances over the last 6 months.

Ms. Mosley asked if Mr. Hodge recognized the petition and he said it was the petition the neighborhood was sending around to sign. She asked if that was the document he sent to Marc Myers, Linda Cox, Peggy Arraiz and others and he said yes.

Under cross examination, Mr. Culverhouse asked if the value of Mr. Hodge's home was affected after he purchased it. Mr. Hodge said the property (1635 Thumb Point) was an unsightly mess, with grass overgrown, and debris all over the grounds; everything the same as it was in 2011. Mr. Culverhouse asked Mr. Hodge if, after an email was sent to him (Mr. Culverhouse) that he (Mr. Culverhouse) took care of the matter? Mr. Hodge said yes, but it took years to get rid of it. Mr. Culverhouse asked Mr. Hodge if he was aware that he had given Mr. Weaver an order to remove the dumpster and clean up all debris. Mr. Hodge said the debris had been sitting there for at least 2 years. Mr. Culverhouse asked what kind of people Mr. Hodge has seen on the lot. He said people fishing, people dealing with the boat. Mr. Culverhouse asked what damage to his property has any of those people done and Mr. Hodge replied none. Mr. Culverhouse asked about the burglaries that took place, but Mr. Hodge didn't know what addresses, or if they were arrested. Mr. Culverhouse asked if he knew that he had told the people with the boat to remove it. Mr. Hodge was not aware of it. He asked Mr. Hodge what his safety concerns were and he said during hurricane season and the debris would blow around and affect other properties including his. He asked about Mr. Hodge's friends making comments about the property and what affect that caused to his life. Mr. Hodge said he had to tolerate the situation and nothing was going to be done. There was no nervous breakdown, he didn't leave his home and go someplace else. Mr. Culverhouse asked what kind of nuisance he had to put up with. Mr. Hodge said he shouldn't have to tolerate the messy property, watching people come and go, working on the boat and people trespassing in general. Mr. Hodge was asked if he knew the property was damaged by Hurricane Irma and he stated that he did not.

On redirect, ACA Mosley asked Mr. Hodge how often he sees workers working around the house. He said maybe every 6 months to move a couple of blocks around so they can get another building permit.

David Sowerby, 1626 Thumb Point Drive was called as witness for the City. Through direct examination by ACA Mosley, he stated that he has lived there for around 29 years and that Mr. Culverhouse was living at 1635 when they moved in. They were neighbors until the storms of 2004. Everyone on the street got damage from the hurricanes. Most everyone had to leave and it took several years to get the property into shape. It was not until 2006 before they could start working on the homes. He said he and his wife were very conflicted with his relationship with the Culverhouses. They (the Culverhouse's) also owned the property next to them because when they bought the property it was a nice view from his veranda looking over the vacant property. Now its going through several stages of construction, the trucks and other vehicles, the debris all over the property caused a big eyesore. But, after 13 1/2 years, they need to finish the project. Ms. Mosley asked how the property located at 1635 Thumb Point Drive affects the value of his property. He said he has no intention to sell but still has concerns for the future. Ms. Mosley asked if he was familiar with property assessment and he said he was a board certified real estate attorney. She asked him how the property appraiser gives an appraised value and how does that compare to the selling price of the property. Mr. Culverhouse objected to this line of questioning because Mr. Sowerby was caused as a fact witness; not an expert witness. Special Magistrate overruled the objection.

He stated that the appraisal affects the sale of a piece of property from a financing stand point because the buyers, with a low appraisal, are not able to obtain the funds that they need to purchase under the contract. He said buyers are going to take into consideration the entire surroundings including what the view is so the condition of 1635 Thumb Point Drive has to affect the sale of the property and the value.

Through cross examination, Mr. Culverhouse asked Mr. Sowerby if the property appraiser appraises lower than the fair market value and he replied yes. He handed Mr. Sowerby the property ID card on his house and noted that his property has increased in value from 2016 to 2017. The property ID card was admitted as Defendant's Exhibit #1. Mr. Sowerby said the property appraiser only takes into consideration square footage, location of the lot, number of bathrooms and bedrooms and is more like a "drive by" appraisal.

Under redirect, ACA Mosley asked if he looked out the window and saw nothing but bricks, blocks, and no landscaping - would that affect how he would sell his house and how much he could get for it? He said it wouldn't affect the value.

SPECIAL MAGISTRATE ROSS RECESSED THE HEARING FOR ONE HOUR FOR LUNCH.

Upon reconvening, Attorney Culverhouse requested permission to allow his witness to testify out of turn due to the need for his witness to return to work. The City did not object and it was allowed by the Special Magistrate.

Richard B Reed II came forward for testimony on behalf of the Respondent. Mr. Culverhouse asked him if he recalled a discussion between them in which Mr. Culverhouse asked to borrow \$300,000 to complete the house. Mr. Reed said that he recalled the conversation and the he decline. He did not loan the money. His partner, Foglio Construction, had obtained the permits to move forward but the condemnation that was posted in January 2018 affected Mr. Reed on his decision not to loan the money. He did take into account the present improvements on the property but the posting of the property made it unwise to do so. Mr. Culverhouse asked Mr. Reed if he observed anything while outside waiting. He said he overheard Mrs. Arraiz speaking to one of the other witnesses about the property and whether there were any fines or liens on the property. The witness was surprised there were no liens.

Mr. Culverhouse said he thought Mr. Reed was talking about Mrs. Krchnak and wanted to dismiss her as a witness. Ms. Mosley said Mrs. Arraiz was speaking to the witness while she was waiting to be questioned during the initial recess prior to the rule of sequestration. Mr. Reed said she was out speaking after the sequestration. Mrs. Arraiz said she had been in chambers the entire time the hearing was taking place except to check on the lunch time for everyone. Special Magistrate Ross asked what Mrs. Arraiz's reply was and Mr. Reed said that she referred Mrs. Krchnak's to the City Attorney. The Special Magistrate agreed that Mrs. Arraiz, to the best of her knowledge, has been in the Chambers throughout the hearing and that the stated conversation in no way has a negative impact on the case. Mr. Culverhouse maintained his objection and said the cameras would tell us what happened.

The City called John Wolsiefer, 1625 Thumb Point Road, to testify. Mr. Wolsiefer said he was familiar with 1635 Thumb Point but he moved to Vero Beach about 3 months ago. He said the Culverhouse's owned the property. He was asked what condition the property was in and he stated everything was good until Hurricanes Francis and Jean came through and did quite a bit of damage to the property. He went over to look at the home and there was an odor, which he could smell in his backyard when the wind was right and the swimming pool was in bad shape. At this time, due to Mr. Wosiefer's ill health and what appeared was some confusion, ACA Mosely requested permission for Mr. Wolsiefer to speak in the narrative or answer leading questions. The Special Magistrate allowed the use of leading questions, but cautioned Ms. Mosley to be direct in her questions. ACA Mosely asked if there was a storage

unit on the property that had been there for years. He said besides furniture, there was building supplies and the contractor was using the property as a staging area but the storage units are not there now. The property has deteriorated more with all kinds of debris that blew all over the neighborhood. It was concrete block walls on an existing slab. Mr. Wolsiefer said his property is for sale but with the neighboring property looking the way it does has an affect on the value of his home. He and other neighbors have approached the City with their claims. Mr. Culverhouse objected to the witness using notes. Special Magistrate Ross overruled stating Mr. Wolsiefer's testimony is consistent with all the other testimonies they have heard and Mr. Wolsiefer presented the hearing cover sheet which he was holding. Mr. Culverhouse objected to the leading questions from Ms. Mosley, which was overruled.

ACA continued her direct examination of Mr. Wolsiefer and he stated when he pulls out of the driveway and comes home he passes the property each time. The appearance is why he moved. He said Mr. Culverhouse made a deal with the City last year and was supposed to have the property completed by December 2017. It wasn't done. The permits were applied for, then expired, and applied for again; but nothing has been done.

Under cross examination, Mr. Culverhouse asked how much Mr. Wolsiefer's house is worth. He said he paid a little under \$500,000 and put \$100,000's into the house. It is worth 1.4 million but he has had no offers. Mr. Culverhouse asked for more details about the mold and odor coming from 1635 Thumb Point Drive and Mr. Wolsiefer said it had been there for years but it's gone now. Mr. Culverhouse asked if he knew they had been in litigation. He said no, but the debris is still there. He was asked how the appearance of Mr. Culverhouse's property affects his property. He says it has affected the sale of the property and nothing has been done. That's what annoys him. He was asked if he lived there when Mr. Weaver moved all of his stuff out. He said yes. The storage units were moved out sometime last year. He said he didn't worry about the paper and lumber but the bare concrete block wall is still there and it looks disgusting. He said he has not suffered any adverse affects like his health and mental anguish.

ACA Mosley called Charlie Hayak to testify however he was not present at the time. Ms. Sylvia Krchnak was called as the City's next witness. Under direct examination, she stated that she lives at 1522 Thumb Point Drive and moved there in 1973. She was familiar 1635 Thumb Point Drive because it's directly across the street and she's known Brad and Susan for a long time. She was asked how the property is since the 2004 hurricanes. She said it was in a derelict state. She was asked about the current state of the property. She said it was concrete block partially completed. It is a reminder of the tragic circumstances everyone went through after Francis and Jean. There is no landscaping. She was asked how the condition of the property affects her quiet comfortable enjoyment of her property. She was concerned about the Zika mosquito problem because of the condition of the swimming pool. It was black and stagnant and she was concerned about the health issues that could occur. She had concern that children might get on the property and into the pool; possibly drowning. They would cross the Culverhouse property to get into another vacant property to use the pool. When asked about trespassers she said a neighbor had her call the police because children were crossing over onto the other property. The police gave them a warning about being on the property. She's called the police department as well as the Citizens on Patrol who were keeping their eye on the property and the trespassers. She was asked if she signed the petition concerning 1635 Thumb Point but said she had intentions but didn't sign. She said its been 13 years and it's incomplete and distressing to look at.

On cross examination, Mr. Culverhouse asked when Ms. Krchnak had called the cops. She said she called the cops for the neighbors who saw the children crossing his property onto the Yanaros property. He asked what other health issues she was concerned about besides the Zika virus. She said there was none that she was aware of. He asked about the safety concerns on his property. She said she was concerned about the children hurting themselves

and she was also concerned about the liability Mr. Culverhouse might face. There is a sign posting no trespassing but the gates were left unlocked and open. She said the pool was green, slimy, yucky and only about 3 or 4 feet of dirty water. She observed this from next door looking over the fence into his yard.

Ms. Mosley released the remaining civilian witnesses and allow them to come back into the chambers.

Heather Debevec was called to testify. Under direct examination she stated that she worked for the City of Fort Pierce for 18 years and Department of Code Enforcement just over a year. Among her duties, she is responsible for posting properties and taking photos. She was asked about the photos which were dated January 17, 2018. They are pictures of the notice for nuisance and the red one is for condemnation. Ms. Mosley showed her the Affidavit of Posting and asked about the date it was signed and she said it was dated 2017 by mistake. Peggy Arraiz, her manager, notarized the document. Mr. Culverhouse said he was okay with the Affidavit being admitted as non-hearsay to show it was posted but objected that it was IPMC. Ms. Mosley said they were not operating under the IPMC but the Resolution by the City which requires posting with a condemned notice per the City Commission. Special Magistrate Ross admitted the evidence. Ms. Mosley said by the record Resolution 17- R38 by the City requires a posting of the notice prior to condemnation proceedings which will occur before the City Commission. Resolution 17-R38 has been admitted as Exhibit 7. Mr. Culverhouse clarified the resolution that the property had not been condemned yet. Ms. Mosley said it would not be condemned until the City Commission approved it. Special Magistrate Ross said Mr. Culverhouse's objections have been noted.

During cross examination, Mr. Culverhouse asked Ms. Debevec when was the last time she took the pictures? She said in January 2018. He asked her what else she did on Thumb Point Drive after signing the affidavit? She said she went with Peggy in February to take other pictures. She said she had very little to do with this case. The photos were taken from the street and city right of way. They did not enter the posted property. He asked her if she took photos before and after Hurricane Irma in 2017 and she said no, not until January 2018. He asked if she observed anyone on the property while she was there and she said no.

Margaret (Peggy) Arraiz was called for testimony. Ms. Mosley asked her about Exhibit 4, which was the letter sent by Mr. & Mrs. Hodge and to describe its contents. Mrs. Arraiz explained that the letter was addressed to the building official Marc Myers describing the deplorable condition of the property at 1636 Thumb Point Drive and asking him to do something about it. Attached to it were 3 pages of signatures from local residents. She received the letter as a part of her job as Code Enforcement Manager and the keeper of the files.

Mr. Culverhouse cross examined Mrs. Arraiz by asking her if she prepared the document and she said no, all she did was stamp that she received it. He asked about the City Clerk being the record's keeper. Mrs. Arraiz said yes but each department maintains there own records and if a public records request comes in, the City Clerk contacts the departments. He asked where it is kept in the office and she said in her office in a drawer. He asked if it had been scanned and she no she doesn't scan until the case is closed. Record keeping is a part of her job description. He asked if she knew, of her own personal knowledge, that the allegations contained in the document are true. She said she believes they are true because she knew Mr. Weaver had a building permit, equipment, and material at the location. There are parts of the letter that she can confirm as true and parts of the letter that were opinions made by the person who drafted the letter. He had no objection to the petition being admitted into evidence as a part of business records and no objection of the cover page going in as business records as non-hearsay to show it was received and the reason code enforcement did something but not that the front page is true. Special Magistrate said he couldn't have it both ways and that

the petition was being admitted as a business records exemption.

At this time the City rested their case.

Mr. Culverhouse called Mrs. Arraiz as his adverse party witness. He showed her the approved plans for the reconstruction of his house, however, she stated that she had no knowledge of that. He asked if she went to the property during September 2017? She said no, after the hurricane she was assigned to Ocean Drive but not the side streets and she had not been to the property prior to the hurricane. The night of the South Beach meeting she did a drive-by and took photos on February 8, 2018. She was asked if she was aware of the damage from Hurricane Irma and she said she had seen photos of the walls that were partially fallen over. He put up photos as Composite Exhibit 1 showing the photos of the walls that had fallen. He showed the photos with the pool and she said she did not remember seeing those particular pictures with the pool. He said he was being cited as a nuisance and he can show he had a valid permit and the property had been completed with the walls going up but Irma caused the damage. He was fighting with the insurance company and could not correct the problem until they adjusted the claim. He said he would go into these things when he testifies.

He asked again if the nuisance was the structure. She said the nuisance is the property and the adverse affect that it is having on the community. The City Commission adopted a rule that said that we can move forward with condemnation and demolition based on the adverse impact of a property on the community. It specifically indicates due to numerous complaints from residents which is the basis for the action that was initiated under Chapter 16 of the City Ordinances which is our nuisance ordinance and also through the Charter. The Charter of the City of Fort Pierce grants the City Commission the authority to condemn and demolish the structure due to the nuisance condition. It's spelled out very clearly in the City Charter. The Resolution was adopted November 2017. He asked about the complaints in 2015. She said the petition that was received in 2015 was just one of the complaints that Staff has received over a very long period of time and it was the accumulation of those complaints that have initiated this process. He asked for the other complaints. She said there had been phoned in complaints of which there is no record of and multiple emails and I have provided you copies of them. He asked if any of them were made after the Resolution was adopted. She said no, but she knew the City Manager's office received one because she was called to a meeting. He said that was hearsay. She said she did not read the complaint but was called to the City Manager's office to discuss it and she had to report to him in writing, which was what generated the timeline. He asked if the timeline was prepared as participation of the litigation and she said no, the timeline was prepared because she was instructed by the City Manager to do it. He asked if she was aware that at the time she posted the property a building permit was issued on the property? She said yes. Was she aware that the City Building Department noted that the property passed inspection and that it did not expire until July 24, 2018? She said yes. Was she aware of the posting on the property by the building department on November 20, 2017? She said no she wasn't aware of that. He asked about the sub-divisions of the resolution and that division 3 states that any proceedings will be suspended if a building permit has been issued. She replied that it says it "may" be suspended, not that it will. He asked if she had been back to the property after February 8 and she said no. He asked her what she had observed as adverse affects of the neighborhood. She said she knew she had been handling this case since 2006. It has been brought to the Special Magistrate... He said she was being non-responsive. He wants to know what her personal observations was not as a part of the City Hall department. She said she knows the condition of the property has caused hardship on the neighbors because they have complained to her office for several years. Her office has been handling this case based on complaints since 2006. The impact on the neighborhood has been negative and the neighbors felt compelled to contact her office and that is why she has continued to follow the case for 12 years now. He asked again what she personally observed in the neighborhood? Special Magistrate Ross said he should realize

her knowledge comes by way of her employment not her personal knowledge. Ms. Arraiz was asked to answer about the personal knowledge and she said she had no personal knowledge because she had no reason to be in that neighborhood outside of her employment with the City of Fort Pierce. She does not know if the property values have had any affect. She does not know anything about any adverse health issues. He was instructed to move on. She said that adverse impacts that she has knowledge of are based upon communication of her code officers and the residents and she has worked closely with the building department and has been an active part of this case, although it's the administrative side as manager. The adverse impact has been brought directly from the residents who expressed their opinions and thoughts to me, which resulted in us moving forward with this matter. The adverse impact is the property value, it is a constant disruption from the people using the property illegally, whether true or not; the outside storage, although you complied it, was a major issue for several years; the unsightliness of the property has caused major hardship on the neighbors who have come to the office, called me, emailed, and she has received multiple complaints.

He asked if she knew what the hardships were and Mrs. Arraiz said they have told her how they have been upset about the people who have walked across the Culverhouse property because they don't know whether that person decided to come onto their property and try to do something. They have told her how friends and neighbors made negative comments about what's going on across the street. It's caused them to become upset having to answer these questions. This is the type of things that has been brought to her attention. It has been time and time again that my office has received these types of complaints.

John Bradford Culverhouse Sr, presented testimony on his own behalf. He is 71 years of age and his legal residence is 1635 Thumb Point Drive, Fort. Pierce. That is where he receives his mail and the address listed on his driver's license. He has always had the intent to rebuild and return to this property. He presented what is listed as Exhibit 1 in the binder presented to the Special Magistrate of the plans and the building code that the permit was issued under and governed by the Florida Building Code of 2014. Ms. Mosley had concerns that it was not a complete document and Special Magistrate Ross agreed, she could not accept a part of a document as evidence. Mr. Culverhouse said he asked for the complete certified document from the City and they didn't give it to him. They had him photograph what was being presented on his iPhone. Special Magistrate Ross reminded him that he the hearing was originally scheduled for March 21 and he asked for an extension until today, the 18th and had sufficient time to get a copy of the complete document from the City to present at today's hearing. He asked that someone from the City come down to testify about the document. Ms. Mosley said she didn't know what relevance it presents as far as if a nuisance exists. He said it is part of his affirmative defense that as long as he has a valid permit they can't do a nuisance. The Special Magistrate reminded him the it "may" be suspended. He said the building permit was issued in August 2014 and issued under the 2010 building code and is still an active permit.

Special Magistrate Ross stated the permit was a part of the timeline, which is a public record. He said the timeline doesn't show they received the permit and passed an inspection by the City on January 27, 2018 and the permit is good through July 27. ACA Mosely agreed to stipulate that there was a valid permit. Special Magistrate Ross said this also listed in the timeline, however, under the Resolution that was passed by the City, section 3 reads that the procedures "may" be suspended with the issuance of a valid building permit that will abate the violations or a stipulation of remediation that clearly outlines the steps required to remedy the violations and a timeline cut for compliance. He said it is his contention there was no violation, which is part of his affirmative defense. Ms. Mosley said she was willing to stipulate that he has the permit that was issued from August 2014, that's a part of our proof and timeline. She stipulated that this was all part of the evidence through the timeline.

He presented photos that were taken by him the day before Irma struck showing the walls had been put up through the first floor and ready to go up for the second floor. They were braced for the hurricane; showing the condition of the walls, no hanging shards, no debris and shows the improvements that they were proceeding in regards to the building permit. He submitted the photographs as composite exhibit 2. There are no time stamps on the photos, however he testified that he took the photos and they accurately portray the scene. Ms. Mosley said if he's showing the condition of the walls and the the interior of the property was braced, she had no objection.

It was noted at this time by the Special Magistrate that the exhibit #s were not matching because of an exhibit that was not properly entered. The Clerk was to number them and make any corrections needed.

Exhibit #3 photos taken September 14, 2017 showing the damage done by the hurricane to the structure. The photos were taken by Mr. Culverhouse and he testified that they accurately show the damage to the property by Hurricane Irma. No date stamp but Ms. Mosley had no objection. The Special Magistrate again instructed the Clerk to make any corrections needed to the exhibit numbers. Exhibit #4 is a series of emails between Mr. Culverhouse and his contractors requesting the estimate of what it would take to repair the damage and emails to the insurance company requesting they adjust it quickly so they can move forward with the repairs. Ms. Mosley objected saying they are not relevant to the existence of the nuisance. Mr. Culverhouse said they show an attempt to move forward. Special Magistrate asked what work was being done now? He said not today, no work has been done since the inspection because of the condemnation posting. Ms. Mosley objected to these documents and concluded it was hearsay. Mr. Culverhouse said he could establish a foundation. He is his own records custodian both personally and as the President and Director of Brad Culverhouse Attorney at Law Charter whose emails were drafted by him and sent by him via gmail under the electronic laws of presumption that they were received. There are emails back to him in the ordinary course of this business in regard to the loss and conducting of his personal affairs and from the insurance adjuster and showing that in regards to the loss and his efforts to get an adjustment beginning in October through December of 2017. Each one of the emails is a true and correct copy of the emails sent and received both as John B Culverhouse Sr and also as Brad Culverhouse, Attorney of Brad Culverhouse, Attorney at Law Chartered. An adjuster came out on October 30 and he did not get an offer until sometime in December. The offer was around \$8,000 or \$9,000, after the deductible, but the case was left open in case there is damage underneath the slab. Special Magistrate Ross asked is he received the check from the insurance company and he said yes but it was forwarded to PNC for them to endorse and they decided to keep it. Mr. Culverhouse said he came out of pocket to make the repairs. Special Magistrate Ross asked if PNC have a mortgage on the property. He said yes. Special Magistrate Ross said it is typical for a mortgage holder to have the owner sign the check and it is deposited to a trust account and money is disbursed in increments as the work is done. Mr. Culverhouse stated that was requested of the bank but they declined and applied it to the loan. She said she was reserve ruling on the emails and Ms. Mosley said she objected to putting the emails into evidence as a defense for the nuisance. She said you just don't co-mingle business and personal records. Special Magistrate Ross asked if the policy presented by Mr. Culverhouse from Lexington Insurance Company, was for 1635 Thumb Point Drive. Mr. Culverhouse said yes and the emails are all under the signature of Brad Culverhouse, Attorney at Law Chartered and the Florida Supreme Court has ruled that a professional corporation, which Brad Culverhouse, Attorney at Law Chartered is, can represent the sole shareholder in matters, so Brad Culverhouse Attoreny at Law Chartered was representing John B. Culverhouse Sr. in this matter and they are business records. He said he has a contract with Joseph Foglia and they are the contractor on the permit. Special Magistrate Ross said she would admit the email that is a proposal from Foglia Contracting. Ms. Mosley said she had no objection to this email. The gmail from Culverhouse to Jennifer Rosignal assigning the claim to an adjuster will be admitted. There was no objection. The October 10 email with a mention

of the wrong number asking for policy showing coverage that would be covered and issued the prior year was admitted. This was showing he had insurance coverage but switched over to a builders risk policy. She had no problem with the email showing the coverage by the policy. Other emails from Lexington Insurance were admitted with no objection but there were several emails that were repetitious of emails already admitted into evidence that were denied.

The next item that was presented and marked as Exhibit #5 is a Notice to Correct dated 11/20/2017 and email from Charlene Adair along with a photo. Exhibit #6 (Section 7 from the book) are photos taken January 27, 2018 showing the repairs completed from the damage of Hurricane Irma, correcting the items addressed in the Notice to Correct. The photos include the dumpster that was being used to haul debris away. From Section 11 of the book, Exhibit #7 are photos showing the condition of the property taken April 17, 2018. There was no objection. The email telling Steve Weaver that he was fired and to clean up the debris was not accepted. Mr. Culverhouse argued that it shows the date of when he told Mr. Weaver to clean up the property and address the issues raised in the nuisance. Special Magistrate Ross stated that this has been testified to and all the witnesses agreed that this occurred and is no longer relevant. Section 17 of the book has all the property cards from the people on the petition. This shows the value of the properties along with a map of the properties of the people from the petition. Special Magistrate Ross found this to be irrelevant. It is public record and anyone can locate it. ACA Mosely stated that she had no objection to the map. Mr. Culverhouse proffered the information that he downloaded all of these property appraisers records, the Assistant City Attorney did not object; therefore, he did not get the records certified. This shows for the last 3 years that the residents property value has risen rather than devalue it. Special Magistrate Ross stated that it is possible the values could have risen even more if not for your property. For the record, Ms. Mosley said she did not object to the authenticity of the records, but she did not stipulate to the admittance of the records. Special Magistrate Ross said it can be a proffer but it is not going into the record. Mr. Culverhouse included as part of the proffer that he is submitting these records because there has been testimony today that 1635 Thumb Point Dr might affect their property values.

The items from Section 18 of the evidence book shows the work being done according to the permit, starting in 2009 when the plans were upgraded to the 2010 code that required the building to be raised above the flood plain, revisions, contracts, release documents and records relating to the work on the property. Ms. Mosley objected and said it was not relevant. Additionally the timeline that was submitted states a permit was issued in 2009, expired, a new permit was issued. Special Magistrate Ross said she didn't see anything else in the notebook was relevant to the timeline proposed by the City. We know you obtained permits. The issue is the time lapse.

Mr. Culverhouse continued his testimony. Regarding the boat, it was tied up to the dock while in distress without his knowledge. He has notified the owner and posted the boat in an attempt to evict the boat but state statute requires 60 days notice before he can take action. In October 2017 he was diagnosed with cancer and went through surgery. He went through another surgery in December and in January he was sent to Moffitt Center and continues to receive treatment. He placed his son's name on the title after his wife died in January 2015. He developed heart problems in November 2017. Either he or his son go to the property every day because he still receives his mail at this address.

Special Magistrate Ross said she was concerned that this action starting in 2005 and here we are in April of 2018 and nothing has been done. Mr. Culverhouse stated his testimony will explain the delay. He said in 2005 he was in litigation with USAA involving the money from Hurricanes Francis and Jean, which was not settled until 2007. We were also under the old building code, which would have allowed the building to be rebuilt without raising it. Special Magistrate Ross stated that she has heard testimony from his neighbors today that they also

suffered the same or similar damage from the hurricanes, maybe not as bad, but they suffered damage also. They got their houses in order and up to code and you, over a thirteen year period of time, haven't. He said the negotiation with the insurance company resulted in a law suit and finally settled for about \$400,000. She asked what improvements were made with the \$400,000 settlement. He said the money was paid to us and to National City or Harbor Bank. At that time they did not have a building permit, he retained an architect and engineer who did not do anything. He fired them and had to get someone else. The bank took the money and reduced the amount of the mortgage - they applied it to the line of credit. Special Magistrate Ross questioned this as the money was designated for repairs and the bank is to hold the money, making disbursements as the work and inspections are completed - but they cannot take the funds and apply it to the mortgage. Mr. Culverhouse stated that this was during the time that Harbor went to National City and then PNC took them over.

AT THIS TIME, AT THE REQUEST OF STAFF, THE HEARING WAS RECESSED FOR A FIVE MINUTE BREAK.

After reconvening, Special Magistrate summarized her questions regarding the use of the insurance money. Mr. Culverhouse said from the 2004 hurricanes to the present date he has spent about \$240,000 and during that time period they demolished the property down to the slab so they could increase the height of the slab. The photos show how high the floor of the present structure is as opposed to the deck below. She asked if this was required by the City or was it something he decided to do himself. He said it was a combination of both. She asked about the swimming pool and he said he had planned to get a variance for the screen enclosure, but the engineer he hired dug his feet. We did not get the permit until 2009 but at that time his wife became ill in 2009 and during this time period his bank was taken over by PNC. He understood they would loan him the money but it didn't take place. He demolished the structure in 2014 and used the slab as the footers. His wife died in January, 2015 and he didn't have the heart to do anything after that for 8 to 9 months. He had arranged financing with Mr. Reed in 2018 but the posting made him say no.

Special Magistrate Ross asked him about the letters from City of Fort Pierce. One is dated February 19, 2016. She read directly from the letter, "As per our meeting, both parties agreed to the following action plan to avoid the city moving forward with the condemnation of the above referenced property. 1) Submit a timeline by February 16, 2016, indicating a reasonable completion date for this project. 2) All exterior work including landscaping in conjunction with this permit shall be completed and inspected by January 1, 2017. Failure to comply will result in the revocation of the permit, condemnation of the structure and the ordered removal of all structural elements on the property. Sincerely, Marc Myers, Building Official." You signed this agreement saying "I, the owner of this property, am in agreement with this action plan and agree to the terms above". Your signature is here and it was admitted as exhibit 5, notarized, and attached was a timeline for construction and repair of your house. Exhibit 6 is a letter dated April 21, 2016 that is a friendly reminder that the project has begun to fall behind. Mr. Culverhouse said on December 11, 2014 he filed a Chapter 11 and it was prior to the confirmation of the Chapter 11 plan and that agreement was rejected by operational law when it was not assumed in the Chapter 11 plan. This relieved him of any obligation of the agreement by the US Bankruptcy Code. She asked if he informed the City of this. He said the City got a copy of everything that was filed in the bankruptcy case. She asked if he told the City that he could not live up to this agreement. He said the bankruptcy provides that any electatory contract whether there is performance to be done relating to a prepetitioned obligation that if that agreement is not assumed in the Chapter 11 plan it is automatically rejected. She said this was not a part of his bankruptcy because he had received insurance money to make the repairs. This was not a part of bankruptcy. He said it was. The City was listed as a creditor. The consensus was that the stipulation was in violation of the 2010 building code that required that an inspection be performed. He said he filed in December 2014 and she said the stipulation was done in February. She asked if he added this to the

bankruptcy petition. He said he did not assume the contract in the Chapter 11 plan and upon entry of the confirmation order by operation of law it was rejected. It was no longer binding. He could not without prior court approval take any action in regard to expenditure of any money on Thumb Point Drive. He said the City knew as well as he did that he was in this bankruptcy before he signed the contract. When he signed it he had intentions to honor the contract.

Special Magistrate Ross called for closing statements.

In closing ACA Mosley stated that in breaking the case down, this is the maintenance of a nuisance on property owned by Mr. Culverhouse in violation of City Code 16-46. Section 16-48 the Fort Pierce Code that deals with definitions, a nuisance as a condition means a certain state of being or situation located on property which: Injures or endangers the comfort, repose, health, or safety of any person and every witness spoke about how their comfort and quiet enjoyment of their property was affected by being unable to utilize their property. The witnesses testified that it was an eyesore, its a vacant property, it attracted trespassers, having to call the police, etc. The neighbors complained about the smell from the mold, comments made by the guests and family when the visit and one neighbor is attempting to sell his house and has not had an offer on it yet. It has been 13 years since 1635 Thumb Point Drive was damaged by the 2004 hurricanes and very little has been done to repair the property. Nuisance as a condition defines property that "tends to or could" depreciate the value of property of any persons. The residents testified to the fact when they had company visit they would get negative comments and it made them feel uncomfortable. It "could" depreciate the value of their property because its next to an eyesore that included trash, litter, and debris from 2005 up until this time. We heard complaints about rats coming from this property and while they could not say they actually saw this, a nuisance as a condition is a condition that provides "or could provide" harborage for rats, mice, snakes, insects or other vermin. The pool that is sitting stagnant is an attraction for mosquitos and the property is overgrown with grass and weeds that "attracts or could attract" rats, snakes, mice, and other vermin. Nuisance as a condition includes landscaping that is not well maintained including lawns, hedges, bushes, and trees. The witnesses said the property was a mess, overgrown and full of weeds. All of this testimony constitutes credible evidence of what constitutes a condition of nuisance per our ordinances. Resolution 17-R38 does not define a condition of nuisance; that definition has existed since 1999. This resolution describes the procedures that are to be followed in determining a nuisance. In these procedures, the City may or may not proceed if a valid permit is issued. During the last 13 years permit after permit has been pulled and they expired and then would be renewed to expire again and no real action has taken place, nothing moving forward, the property is still an eyesore and the neighbors are continuing to complain about the condition of this property. In July 2014 the residents put together a petition and presented it to the City for action to be taken on this property. We recommend that you find that this property is a nuisance and that you move this matter forward to the Commission.

Mr. Culverhouse's closing statements started with reasserting the constitutional issues he raised in the beginning so there's no issue of waiver on them. And also assert the affirmative defense that because there is an active building permit that is an offense against the City's action in declaring it a nuisance. The City issued a building permit in 2014. The permit has remained active, inspections have taken place, progress has been made in regard to its reconstruction. According to the time line, the last inspection was on January 27, 2018 which was after the posting and at that time the City of Fort Pierce Building Department passed the property and now the next inspection is due on or before July 26, 2018. Nobody testified they saw any rats or raccoons on his property. No one testified they got ill from it. They did testify about friends who made comments about the property but there was no adverse affects from it as far as health is concerned. He said he was the sole responsible person for this property and his son had nothing to do with it. The neighbors testified about several problems that have been resolved. When they complained directly to me, I took care of it. I terminated the

contractor who was responsible for the problems that occurred there. There's no basis that the value of the homes are affected by his property. He said when someone couldn't sell their property and put the blame on his property, that was pure conjecture. There was no proof that his property brought down the value of other residents property. And to say the mosquitoes or other conditions "could" cause a problem is not right. He said the value of the improvements are in excess of \$100,000 and he needs that to borrow the money in order to finish the project. After Hurricane Irma, there was damage but he had the insurance adjuster come out and they made the necessary repairs. He said he's been moving ahead with the repairs and improvements but the posting in January has brought things to a stand still. He said as far as enjoyment and comfort is concerned, there's nothing that has actually kept them from enjoying the quiet comfort in their own homes. He was in the process of getting the boat removed but he has to follow the law to get it out. It is his contention that the property does not constitute a nuisance and should not have been condemned. He requested that it be denied.

Special Magistrate Ross said with regards to the testimony and evidence presented, her findings were that the residents that live on Thumb Point Drive have had to tolerate Mr. Culverhouse's house since it's destruction after the 2004 hurricanes. Those residents testified themselves that they all suffered damage and had to leave for more than a year. All of them slowly got back into their houses and resumed a normal lifestyle. His house has been in a state of disrepair for more than 13 years. The regulations for how we take care of our properties affect each of us, no matter where they live. There's been many unfortunate incidents including his wife dying, but you received more than \$400,000 in insurance proceeds and she didn't know where the money went but it does not appear that the money was used to significantly try to repair the home. The structure is still at ground level and there's no excuse anymore. The boat that is moored on your property is still there. He signed an agreement with the City agreeing to do repairs within a certain amount of time that you agreed to, you signed and it was notarized - but you did nothing. You sent notice to the City that the bankruptcy you filed rendered the agreement void. Where is your intention to ever improve the property? The neighborhood appears to be a close knit neighborhood. They call each other when there are trespassers in the area. She said you made some attempt by pulling permits but that is all you did. You were given 13 years to correct this situation but so far you haven't put a dent in making any repairs. Children have gone from kindergarten through 12th grade in 13 years. It is a long time.

Based on those facts I am going to declare the property a nuisance and to forward it to the City Commission for final determination. This is a recommendation only. The Commission is free to do whatever they will. Good luck to you.

MEETING WAS ADJOURNED.

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9. NEW BUSINESS

10. OLD BUSINESS

Adjourned: 6:50 PM
Respectfully submitted:
Colleen Greer
Code Enforcement Clerk