

**CITY OF SANIBEL
LEGAL DEPARTMENT**



MEMORANDUM

TO: Members of City Council

FROM: Kenneth B. Cuyler *KBC*
City Attorney

DATE: April 9, 2013

**RE: Request for fine reduction relating to Brazilian Pepper Code Violation
and Code Enforcement Order**

Melanie O. Iwanowski is the owner of a vacant lot located at 3005 Turtle Gait Lane, Sanibel, Florida. Ms. Iwanowski was cited for failure to comply with the City's Ordinance providing for mandatory eradication of Brazilian Pepper located on the vacant parcel. Ms. Iwanowski was found in violation of the Ordinance and a Code Enforcement Order was entered by the Hearing Officer on August 20, 2012, which required Ms. Iwanowski to pay the City of Sanibel's costs in the amount of \$741.99 and imposed a fine of \$100 per day if the Brazilian Pepper was not removed within the time period set forth in the Code Enforcement Order. To date, the total fine that has accrued is approximately \$20,000.

Ms. Iwanowski currently has a contract to sell the property at 3005 Turtle Gait Lane and the closing is expected to occur soon. The City has been advised that the new owners are aware that the Brazilian Pepper will have to be removed from the property promptly.

Ms. Iwanowski has submitted the attached request that the City Council consider a reduction in the accrued fine and has authorized Kara Cuscaden (who is representing her in the real estate transaction) to present her request to City Council at the Council's meeting of April 16, 2013. An email from Ms. Iwanowski and the Code Enforcement Order are attached for your reference.

If you have any questions regarding this matter, please let me know.

KBC/jg

cc: Judie A. Zimomra, City Manager
Pamela Smith, City Clerk

MELANIE DOMANI
3887 NovaLine Lane
Jacksonville, FLA. 32274

To: karasue@comcast.net
Subject: City Council

To Whom it may concern:

I, hereby authorize: Kara Cascaden aka K.C. to represent me at the city council meeting on Tuesday 4/16/13. K. C. will explain my situation having not been able to remove "THE PEPPER TREES" due to my financial situation.

1 - I lost my job on 4/11/12.

2- My Father died unexpectedly on 12/22/12.

3- I have been taking care of my Mother who was moved to a retirement facility.

4- I have had absolutely no financial income since 9/11/12.

I would be appreciative to the City Council for anything they would be able to do to help me in reducing the current fine that I owe for not removing the Pepper Trees.

Sincerely,

Melanie Iwanowski aka Melanie Domani

*Melanie Iwanowski AKA Melanie Domani**

Melanie Iwanowski aka Melanie Domani

P.S. I pray City Council that you will forgive me this entire fine and penalty that's been incurring since the Hearing and Violations of 8/20/12. Thank you from All of my heart.

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*Sincerely,
Melanie Domani**

PARCEL #: 27-46-22-T3-00400.0030

THIS SPACE FOR RECORDING
BEFORE THE HEARING EXAMINER OF
SANIBEL, FLORIDA

CITY OF SANIBEL
Petitioner

VS.

Case # 2011-395

Melanie O. Iwanowski
Respondent

CODE ENFORCEMENT ORDER
(According to Chapter 162, Florida Statutes)

THIS CAUSE was heard at a public hearing on August 16, 2012 (continued from July 19, 2012) before the undersigned Hearing Examiner. The Petitioner was present and the Respondent was not present.

THE HEARING EXAMINER having considered the sworn testimony, evidence, and arguments presented by the Petitioner, and the Respondent not having presented any testimony, evidence, or argument, the Hearing Examiner finds and decides as follows:

A. FINDINGS OF FACT

1. The City of Sanibel Code Inspector initiated these proceedings.
2. All testimony was given under oath.
3. The Respondent, Melanie O. Iwanowski, is the owner of the Respondent's Property, located at 3005 Turtle Gait Lane, Sanibel, Florida 33957, (the "**Respondent's Property**").
4. The Respondent received a Notice of Violation and a Notice of Hearing. The July 19, 2012 hearing was continued, with Respondent's consent, to August 16, 2012.
5. The Notice of Violation alleged the existence of Respondent's violation of the City of Sanibel Ordinance, specifically Sanibel Code Section 14-292, Mandatory Eradication

(Brazilian Pepper Eradication Program), specifically Respondent's failure to eradicate Brazilian Pepper on Respondent's Property. The Notice of Violation clearly specified the action required of Respondent to abate the violation, that is: Respondent's permanent removal of Brazilian Pepper from the Respondent's Property and thereafter obtain an inspection by the Petitioner for Respondent's Property.

6. The Respondent has not complied with the Notice of Violation and as of the date of the hearing Respondent had not abated the violation of Sanibel Code Section 14-292.

7. The Petitioner incurred Costs in the amount of \$741.99 as of August 16, 2012.

B. CONCLUSIONS OF LAW

1. These proceedings are pursuant to the Local Government Code Enforcement Boards Act, Chapter 162, Florida Statutes.

2. The Hearing Examiner has the authority to impose administrative fines and other non-criminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

3. Respondent, by reason of the foregoing, violated Sanibel Code Section 14-292 on the Respondent's Property.

4. Petitioner has prevailed in prosecuting its case and according to 162.07 (2), Florida Statutes, Petitioner is entitled to recover all costs in prosecuting the case which shall be included in the lien authorized by 162.09 (3).

5. Respondent's violation of 14-292 of the Sanibel Code within five years shall be a repeat violation as defined by 162.04 (5), Florida Statutes.

Wherefore it is ORDERED:

Respondent, Melanie O. Iwanowski, shall:

1. Within fourteen (14) calendar days of this Order, apply to the City of Sanibel for a permit to remove the Brazilian Pepper and abatement of the violations, and within fourteen (14) calendar days of the issuance of the permit, abate the violations of Sanibel Code Sections 14-292, at Respondent sole expense, on the Respondent's Property by: removal of all Brazilian Pepper from the Respondent's Property, and thereafter notification of the Sanibel Natural Resources Department for an inspection of the Respondent's Property.

2. Within thirty (30) calendar days of this Order, pay to the City of Sanibel its costs of this action in the amount of \$741.99.

If Respondent fails to timely perform each of the above, a fine of \$100.00 per day shall be

begin to accrue, without further order, until each of the above have been fully performed.

Upon recording this Order in the Public Records, this Order shall constitute a lien against all of Respondent's real and personal property, including but not limited to the Respondent's Property described herein, and subsequent foreclosure of the lien may result in the loss of such property.

Done and ordered on August 20, 2012 at Sanibel, Lee County, Florida.



Anthony J. Gargano
Hearing Examiner in and for the City of Sanibel

Note: Appeal: An aggrieved party may appeal an order of the Hearing Examiner to the Circuit Court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal must be filed within thirty (30) days of the execution of the Order to be appealed.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been sent by U.S. Mail to Respondent, Melanie O. Iwanowski, at 3887 Novaline Ln., Jacksonville, FL 32277; and to Petitioner, City of Sanibel, c/o Kenneth Cuyler, Esq., City Attorney and Terri Cummins, Code Enforcement Officer, Office of Legal Affairs, 800 Dunlop Road, Sanibel, FL 33957-4096 on August 20, 2012.



Anthony J. Gargano
Hearing Examiner in and for the City of Sanibel