

**SPECIAL MEETING
OF THE SPECIAL MAGISTRATE
TOWN OF LADY LAKE, FLORIDA**

May 19, 2015

The special meeting of the Special Magistrate was held in the Town Hall Commission Chambers at 409 Fennell Blvd., Lady Lake, Florida. The meeting convened at 10:30 a.m.

TOWN STAFF PRESENT: Aaron Graulau, Code Enforcement Officer; Thad Carroll, Growth Management Director; and Julia Wolfe, Staff Assistant to the Town Clerk

Also Present: Commissioner Paul Hannan

CALL TO ORDER: Valerie Fuchs, Special Magistrate, called the meeting to order at 10:30 a.m.

PLEDGE OF ALLEGIANCE: All present stood to recite the Pledge of Allegiance.

Approval of January 27, 2015 Minutes

Special Magistrate Valerie Fuchs accepted the January 27, 2015 meeting minutes into the record as presented.

SWEARING IN: Special Magistrate Valerie Fuchs requested that anyone present who planned to speak at today's meeting stand and be sworn in.

Explanation of Procedure

Special Magistrate Valerie Fuchs explained to the public that this is a quasi-judicial hearing, which means that she has not seen or heard any evidence or testimony from staff or outside parties other than cases that have been continued from a public meeting, as this would be a violation of ex-parte rules. She stated that if any pictures or other evidence are presented this morning, the interested party will be able to review it in order to accept or refute it and be able to present their own evidence and testimony prior to the Special Magistrate making her ruling.

The Special Magistrate also explained that Code Enforcement staff will present their case and testimony, then the owner or interested party will be able to present their testimony or evidence. After that, staff will have the opportunity to rebut or refute any evidence that is presented. The Special Magistrate will then ask any questions that she deems appropriate and relevant during the testimony of each party before making her ruling. The order will be entered and the interested party will receive a copy of the order whether it is dismissed, or time granted in order to come into compliance, and whether a fine or lien will be imposed.

Special Magistrate Valerie Fuchs asked staff if there were any changes to today's agenda.

Code Enforcement Officer Aaron Graulau reported that two cases on this morning's agenda have come into compliance prior to the meeting: Item #1, Case No. 15-5363; Item #2, Case No. 15-5277; and Item #4, Case No. 15-5366 was removed.

OLD BUSINESS: No old business.

NEW BUSINESS:

1. Case No. 15-5363- 503 Canopy Lane –Golf South Inc. - Town of Lady Lake Land Development Regulations- Ch. 10-5(a) Tree Removal Permit Required

This case has come into compliance.

2. Case No. 15-5277 -1414 Meadow View Way- Michael W & Roberta A Hefner- Town of Lady Lake Land Development Regulations- Ch. 9(h)(1) Outside Storage

This case has come into compliance.

4. Case No. 15-5366 -1617 W. Schwartz Blvd.- Leo R. & Mary Herbert- Town of Lady Lake Land Development Regulations- Ch. 10-5(a)(8) Hat Racked Tree

This case was removed.

Code Enforcement Officer Aaron Graulau asked that Item #5 be heard first as someone was present regarding this case.

5. Case No. 15-5358 -1411 Meadow View Way-Braxton W. Price Trustee - Town of Lady Lake Land Development Regulations Ch. 10-5(a)(8) - Hat Racked Tree

Code Enforcement Officer Aaron Graulau presented the background on this case. He stated this property is in violation of the Town of Lady Lake's Land Development Regulations Chapter 10-5 (a) (8) for hat-racked tree.

Mr. Graulau reported that an initial inspection of the property was conducted on March 2, 2015 in response to a complaint of a hat-racked tree. He stated he spoke with the property owners regarding the action that had been taken with the trees and provided an explanation of ordinance this same date. He stated contact was also made with Rodney Rogers this same date, who stated he was an arborist and that this was considered an industry accepted trimming technique. He stated he asked Mr. Rogers to provide proof of his arborist certification, which was never provided.

Mr. Graulau stated he met with Dr. Price on March 3, 2015 at Town Hall and discussed all the options that were afforded to him by code. He stated on March 4, 2015, Rodney Rogers commented that the trees would recover as they had in the past, as he had performed this same type of cut before.

Mr. Graulau stated a courtesy violation notice was mailed to the property owner on April 15, 2015. A Notice of Hearing was mailed via certified and first class mail to the property owner at the address listed on the trustee document on file with the County Clerk's office on May 7, 2015. Photos were entered as evidence.

The Special Magistrate asked how many hat-racked trees were on the property.

Mr. Graulau replied there were two.

The Special Magistrate asked if there was anyone present to speak on this case.

Earle Peterson Jr., P.A., an attorney representing Braxton Price, asked the Special Magistrate if he could ask Mr. Graulau some details. He asked Mr. Graulau if he knew the applicable time to give notice to Dr. Price about the Notice of Hearing.

Mr. Graulau replied the Florida statute requires a minimum of 10 days.

Mr. Peterson asked Mr. Graulau if he was familiar with the Town's ordinance which states 15 days.

Mr. Graulau stated he was new to the jurisdiction, and may possibly have run into a technical issue with notice.

The Special Magistrate asked Mr. Graulau if he has a copy of the code.

Mr. Graulau replied that he does.

Mr. Peterson stated it is not a big issue, but he wanted to show that the respondent only had six days' notice by the time he received the certified mail. He stated there is a 15 day notice requirement in the ordinances of Lady Lake and he understands now that the Code Enforcement Officer was under the impression that the statute was the controlling issue on this case.

The Special Magistrate stated it is important legally to abide by the ordinance if it states 15 days. She stated she would pull the case in order to give appropriate notice and bring the case back next month.

Mr. Graulau stated he would be in total agreement with bringing the case back next month.

The Special Magistrate stated she would continue the case to make sure the case is in compliance, so it does not get overturned if anyone challenges it. She stated she was glad Mr. Peterson brought up the issue and the Town will make sure the applicant gets noticed properly.

Mr. Peterson stated they would like to proceed today and not have to come back on another date.

The Special Magistrate stated she does not want her decision challenged and overturned if the case proceeds today and Mr. Peterson brings up a challenge later. She stated the one thing that cannot be waived is the right to reasonable time and to insure strict compliance, especially with statutory being ten days.

Mr. Peterson asked again if the Special Magistrate would allow them to proceed so they would not have to appear another day.

The Special Magistrate stated she will not hear any facts on the case because the procedural requirements were not followed. She stated that the Town has a new staff member and she

would like him to become familiar with notice provisions as well, and she appreciates him bringing up the issue and it will be followed correctly in the future.

Special Magistrate Valerie Fuchs stated that Case No. 15-5358 will be heard next month to make sure all procedural requirements are adhered to. The property owner will get a copy of this order.

The original agenda order was re-established.

3. Case No. 15-5365 -1415 E. Schwartz Blvd.-Rose M. Reeder- Town of Lady Lake Land Development Regulations Ch. 10-5(a)(8) Hat Racked Tree

Code Enforcement Officer Aaron Graulau presented the background on this case. He stated this property is in violation of the Town of Lady Lake's Land Development Regulations Chapter 10-5 (a) (8) for a hat-racked tree.

Mr. Graulau stated an initial inspection was conducted on April 20, 2015 as a result of a complaint of a hat-racked tree, and he spoke to the property manager this same date who advised she was unaware this was a prohibited practice. He stated the property manager agreed to comply with the regulations, and entered a plea of no contest and assured compliance on April 28, 2015.

Mr. Graulau stated he spoke with the property manager after postings were performed on May 13, 2015, and she stated she would not attend the hearing because it was in conflict with her work schedule. He stated on May 18, 2015, the property manager asked to be advised of the outcome after the hearing.

Mr. Graulau stated that staff recommends assessing an \$87.00 administrative fee, and require that an inspection be performed by a licensed arborist one year from the hearing date. He stated that report shall be provided to staff or a fine of \$50.00 per day be levied against the property owner for each day the violation exists. Photos were entered as evidence.

The Special Magistrate asked if there was only one tree with an issue on this property.

Mr. Graulau replied that is correct.

The Special Magistrate asked if there was anyone present to speak on this case. There was no one.

Special Magistrate Valerie Fuchs stated that based on the testimony and evidence presented on Case No. 15-5365, she did find that the owner was in violation of the Town of Lady Lake Land Development Regulations Chapter 10-5(a)(8) for excessive pruning of a tree. A re-inspection by an arborist to determine the condition of the tree must be completed in one year. An administrative fee of \$87 is imposed to be paid within ten days of this date.

The violator shall contact Code Enforcement to confirm compliance. The violator has a right to request a hearing on the fine imposition by written request to the Town of Lady Lake within

twenty (20) days of the commencement of the fine. When requested, such a hearing will be heard by the Special Magistrate. The property owner will get a copy of this order.

OTHER BUSINESS

The Special Magistrate asked if anyone in the audience had information or wanted to come forward and stated that her jurisdiction is only over the specific Code Enforcement cases that are before her.

Darlene Wilcox of 1614 Cypress Point stated that whole area just down the hill from the golf club restaurant in the historical section had beautiful trees, and people are coming in and just whacking them; not just hat-racking, but total devastation. She stated it breaks her heart and she would like to make some recommendations to do some type of intervention. She stated she would like to see regular newspaper articles written on the front page so people get educated and do not respond to random solicitation.

The Special Magistrate stated the problem is with the companies and it is the owner's responsibility for what occurs on their property. She stated the owner may have civil recourse against their contractor if the contractor does something above and beyond and do not have a license.

Ms. Wilcox commented these are not contractors.

The Special Magistrate stated they are probably unlicensed and she empathizes with the situation. She stated it is happening in Clermont and other areas, as well. She stated the proper venue would be the Town council meetings and there is also a reporter in attendance today that may be able to assist with getting out a nice article to assist the residents.

Ms. Wilcox stated that was a start, but she would also like to see legislation going on that requires these people to be licensed.

The Special Magistrate replied that would be at the county or state level.

Ms. Wilcox stated that is where she is trying to start because the people across the street just chopped out some trees and she is so sad.

The Special Magistrate stated it is heartbreaking, but it really starts off with the legislature or the county, and they do have ordinances in place, but unfortunately you cannot regulate those who do not want to follow the law.

Ms. Wilcox stated she understands that because she has heard some people say "*if I do not like the tree, I do not care*". She stated perhaps if there was a higher fine instead of \$87.00.

The Special Magistrate stated the \$87.00 fee is to cover costs. She stated if staff goes out in a year and does an inspection and the arborist report shows the tree cannot come back, then a fine can be imposed of \$250.00 for the first offense and up to \$500.00 for the second offense at that time. She stated the fine is guided by Florida Statute Chapter 162 and it takes lobbying your legislature to get that changed. The Special Magistrate stated she agrees the penalties are low for

tree hat-racking. She thanked Ms. Wilcox for attending the meeting and caring about her community.

The Special Magistrate asked if there was anyone else in the audience who would like to speak.

ADJOURN

With no other business to discuss, the meeting was adjourned at 10:47 a.m.

Julia Wolfe
Staff Assistant to Town Clerk

Valerie Fuchs
Special Magistrate

Transcribed by Julia Wolfe, Staff Assistant to Town Clerk